

MAINE STATE LEGISLATURE

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MAINE COMMISSION TO REVISE
STATUTES RELATING TO JUVENILES

PRELIMINARY REPORT
OF
RECOMMENDATIONS AND ANALYSIS

VOLUME 2 - Appendices

October, 1976

NOV 16 1990

APPENDICES

APPENDIX 1

H.P. 1271 - L.D. 1752

"An Act to Create a Commission to
Revise the Statutes Relating to
Juveniles, Including the Statutes
Relating to Juvenile Court."

JUL 1'75

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STATE OF MAINE

BY GOVERNOR

P & S LA

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

H. P. 1271 — L. D. 1752

AN ACT to Create a Commission to Revise the Statutes Relating to Juveniles,
Including the Statutes Relating to the Juvenile Court.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State of Maine has a long established legislative policy of dealing with juveniles and matters relating to juveniles by specialized statutes and court procedures evidencing a state responsibility; and

Whereas, constitutional principles concerning juveniles have undergone extensive change in the last decade; and

Whereas, the juvenile statutes of the State of Maine have been amended and changed from time to time on a limited and piecemeal basis, generating problems and criticisms; and

Whereas, a thorough review and revision of the juvenile statutes of the State of Maine would be extremely valuable and is long overdue; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Commission; duties. A special commission to be known as the "Commission to Revise the Statutes Relating to Juveniles" shall be constituted and appointed to supervise the preparation, in final legislative draft form, of a proposed juvenile code for the State of Maine, which shall be presented to the regular session of the 108th Maine Legislature. This proposed code may, without limitation, incorporate all necessary repealers, amendments and modifications of existing laws as, in the judgment of the commission, are necessary and appropriate to accomplish the commission's purposes. The proposed code may include such new or modified provisions as, in the judgment of the commission, will best serve the interests of the people of the State of Maine, and the commission shall give due consideration to the juvenile statutes and codes of other states and of the Federal Government and of the requirements of the enforcement thereof. The commission shall give particular weight to the needs and resources of the State of Maine and of its various agencies and institutions dealing with juveniles through the areas of education, community based corrections, institutional corrections, policing agencies and the court system. The commission shall employ a chief counsel, and at its discretion, such additional counsel as may be required to perform the necessary research and drafting of such code. The chief counsel shall be responsible for meeting the requirements as set forth. The Depart-

ment of Health and Welfare shall provide other staff assistance as required. The commission shall hold public hearings as may be deemed necessary to obtain information from interested members of the public and to acquaint the public with the work of the commission.

It is the purpose and intent of this Act to provide the commission with sufficient authority and funds to enable it to present to the Maine Legislature proposals for a fully modern, integrated and consistent juvenile code and juvenile court.

Sec. 2. Membership. The membership of the commission shall consist of 17 persons. The Governor shall appoint the following members of the commission: One shall be a member of the bar experienced in the trial of juvenile cases. One shall be a member of the Governor's Committee on Children and Youth, or its successor. One member shall be a representative of the community mental health program. One member shall be a child psychiatrist or psychologist. Two shall be qualified by reason of common sense and broad experience in everyday affairs as representatives of the public, which may include persons with experience in community based corrections or policing agencies. One member shall be a representative of the Chiefs of Police Association. One member shall be a representative of the State Principals' Association. One member shall be a representative of the District Attorneys' Association. In addition, 2 members shall be Senators, to be appointed by the President of the Senate and 3 members shall be Members of the House of Representatives, to be appointed by the Speaker of the House, provided that 3 of said Senators and Members of the House of Representatives shall be members of the Joint Standing Committee on Judiciary. The Chief Justice of the Supreme Judicial Court shall designate one consultant to the commission who shall be an active judge of the District Court. One member shall be a representative of the juvenile corrections system of the State of Maine, to be appointed by the Commissioner of Mental Health and Corrections. One shall be a representative of the Department of Health and Welfare to be appointed by the Commissioner of Health and Welfare. One member shall be the Director of the Children and Youth Services Planning Project or his designee. Members chosen shall serve for the duration of this Act, to be no less than 2 years from the date of passage. In the event of the death or resignation of any member, the person who appointed the original member who has died or resigned shall appoint a new member in the same manner as the original appointment. Nine members of the commission shall constitute a quorum.

Sec. 3. Meetings. The commission shall be appointed promptly upon enactment of this Act and the Governor shall notify all members of the time and place of the first meeting. At that time the commission shall organize, elect a chairman, vice-chairman and secretary-treasurer and adopt rules as to the administration of the commission and its affairs. The commission shall maintain any minutes or the meetings and financial records which may be required by the State Auditor and shall report periodically its progress to the Governor.

Sec. 4. Chief counsel. The commission shall contract a chief counsel, who need not be a resident of this State, who shall have responsibility for legal research and drafting, as required in connection with the preparation of the proposed juvenile code, under the direction and supervision of the commission. No person shall be employed as chief counsel who shall not, by virtue of prior training, experience, ability and reputation, have clearly demonstrated the ability to perform the tasks to be assigned to him by the commission. The chief counsel shall coordinate his efforts with the appropriate legislative agency concerned with statutory revision on matters involving the form of any recommended legislation.

Sec. 5. Reimbursement of expenses. The members of the commission shall serve without compensation, but may be reimbursed for their reason-

able expenses in attending meetings, procuring supplies, correspondence and other related and necessary expenditures.

Sec. 6. Other funds. The commission shall be authorized, on behalf of the State, to seek and accept funds from any other source, including the Federal Government, and to seek the advice and assistance of the Maine Law Enforcement Planning and Assistance Agency in carrying out its duties.

Sec. 7. Appropriation. There is appropriated from the General Fund to the Commission to Revise the Statutes Relating to Juveniles the sum of \$5,000 for the fiscal year ending June 30, 1976 to carry out the purposes of this Act. The balance shall not lapse but shall be a continuous carrying account until the purposes of this Act have been accomplished.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

IN HOUSE OF REPRESENTATIVES,.....1975

Read twice and passed to be enacted.

.....*Speaker*

IN SENATE,.....1975

Read twice and passed to be enacted.

.....*President*

Approved.....1975

.....*Governor*

APPENDIX II

Example* of Staff Analyses

Of Available Statistical Data:

Analysis of Available Statistical Data

Related to Prevention Issues

August 5, 1976

*Staff Analyses of Available Statistical Data were prepared for all four goal areas: Prevention, Non-Criminal Behavior, Criminal Behavior, and Juvenile Courts. The analysis in the prevention area is included here to provide an example of this aspect of the Commission's research.

INTRODUCTION

In order to analyze data about "prevention", we must formulate some clear ground rules pertaining to this elusive concept.

What is to be Prevented?

First, the term "prevention" is meaningless without some specific definition of what is to be "prevented". Moreover, there must be some means of measuring what is to be prevented.

• Two measures are used for this paper.

1. Total Juvenile Part I and Part II arrest rates.

Total juvenile arrest rates for each county in Maine are currently the best available indicator of the relative level of juvenile crime and delinquency throughout the state. We are making the assumption that lower rates, by definition, mean that successful prevention has occurred. Whether or not these lower rates are the result of consciously conceived services is a question we hope to address in greater detail below.

2. Rate of children dropping out of school.

The Commission has specified the "dropout" problem as a major target for preventive services. The selection of this measurement implies that there is some causal link between dropping out of school and engaging in the type of behavior that leads to delinquency or is itself delinquent or criminal. It is also probably socially desirable to maximize the chances that children will complete their school careers.

Thus, lower dropout rates are considered to show that dropping out has been "prevented", whether or not a link to a specific service has been established.

What is Prevention?

The second consideration has to do with the appropriateness of the medical prevention model to social problems. Three types of prevention are often distinguished in the health, and, more recently, the mental health fields:*

Primary prevention is actually direct intervention--the treatment of persons who have contracted a disease or sustained an

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We are not discussing the "crime prevention" field here because the emphasis on detection and law enforcement technology is inappropriate to the treatment/development purpose of Maine's juvenile statutes.

injury. The equivalents in the juvenile justice area would be the identification, assessment, and treatment of juveniles who have committed offenses.

Secondary prevention involves treating the healthy individual or population so that disease does not occur. Inoculation programs are the obvious example. Secondary prevention for juvenile justice might include: police presence or other deterrents, the opportunity to engage in activities that cut down the amount of time available for delinquent behavior, and, more importantly, the provision of services that modify or extinguish delinquent behavior.

Tertiary Prevention involves the attempt to change the environmental or social context of disease, often using public awareness campaigns and educational programs. Programs designed to make people aware of youth services or to improve family life could be considered tertiary prevention in the juvenile delinquency area.

The problem with applying the medical prevention model to delinquency is that while specific micro-organisms and organic dysfunction can be linked to specific diseases,

the causes of delinquent behavior are not well established. Consequently, there are no sure anti-toxins for delinquency.

Because the causes of delinquency are complex and only vaguely known, and because the effectiveness of various youth services has never been well established, inferences drawn from data about prevention are, at best, tenuous.

What can we conclude about preventive service effectiveness?

Finally, because of the way our data are structured, the analysis should not be interpreted to reflect on the quality or effectiveness of specific services. For example, it turns out that camperships given to youths correlate positively and significantly with dropout rates. This means that the more camperships given in a county, the more likely that county is to have a high dropout rate. If the campership program is supposed to serve as a method of preventing dropouts, it might appear that the program is not effective statewide. However, an in-depth study of youth participating in the campership program compared to those who do not participate might show that participants have a significantly lower dropout rate. In this hypothetical case, one might conclude that in fact the campership program is effective for those it serves, but does not serve enough children, or, perhaps, the right children. Unfortunately, specific in-depth

information of this type is beyond the scope of this project and is not otherwise available.

In addition, the reader should keep in mind that the variances (differences) measured by our data are meaningful only at the county level.

While the county-by-county analysis is fully justified because juvenile court and other social services are administered at the county level, the aggregate county figures may mask important intra-county (city, township or LEA) patterns. For instance, it was expected that juvenile arrests might show a positive correlation with number of children in families below the poverty level. Instead, juvenile arrests showed an insignificant negative correlation with children in families below the poverty level.

We cannot tell whether wealth and delinquency are distributed evenly throughout the counties. Only by looking below the county level can we discover whether there are pockets of poverty with higher juvenile arrest rates than the surrounding areas of greater wealth.

It may in the future be desirable to undertake another study of the same variables at a more discrete level.

METHODS

The two methods used to analyze county-by-county delinquency and dropout rates were correlation and partial correlation.

Correlation, explained in a brief working paper presented to the Commission in April, permits us to test hypotheses about the relationship between two variables, such as juvenile arrest rates and urbanization.

A "correlation coefficient", which may range from -1.000 to +1.000 is an index of the linear relationship between two variables. A coefficient of -1.000 shows a perfect negative relationship--a higher value for one variable will predict a lower value for the other. On the other hand, a coefficient of +1.000 shows a perfect positive relationship--a higher value for one variable will predict a higher value for the other. A coefficient near "0" shows no linear relationship.

Usually, a correlation coefficient falls between -1.000 and +1.000. However, in order to infer a positive or negative relationship between two variables, we need to know (1) the value of the coefficient and (2) the number of cases studied (for this project, Maine's 16 counties). Accordingly, we have noted the significance of each coefficient. A correlation is usually considered "significant" if a coefficient of a given size would occur by sheer chance less than five times out of a hundred.

The major drawback of correlation analysis (and of multiple regression) is its inability to test causal hypotheses. For example, a significant positive correlation

between two variables may reflect the fact that both variables are separately and independently related to a third variable--in other words the correlation is "spurious". In examining the correlations among many pairs of variables or looking at the results of a multiple regression analysis, it is often possible to formulate several alternative explanations that fit the same data.

Fortunately, work in the analysis of "recursive" systems of equations provides a way of stating and testing causal relations among a dependent and several independent variables.* Proponents of this method emphasize the inferential nature of conclusions drawn from the data, and recommend a common sense approach to formulating the causal models.

The specific technique is called "partial correlation", which mathematically holds constant or controls for the effects of one or more variables while testing the relationship between two other variables.**

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Journal of the American Statistical Association, 1954, Vol. 49, p. 467-479, H.M. Blalock, Jr., "Four Variable Causal Models and Partial Correlations"; American Journal of Sociology, Vol. 68, p. 182-194; Norton, N.Y., 1974; Herbert A. Simon, "Spurious Correlation: A Causal Interpretation".

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The formula for correlation of i and j, holding k constant is given:

$$r_{ij.k} = \frac{r_{ij} - (r_{ik})(r_{jk})}{\sqrt{1-r_{ik}^2} \sqrt{1-r_{jk}^2}}$$

when r_{ij} = correlation between i and j, r_{ik} = correlation between i and k and r_{jk} = correlation between j and k.

Thus it is possible, for instance, to see whether juvenile Part I arrest rates continue to correlate significantly with urbanization if prevalence of law enforcement officers is held constant.*

VARIABLES ANALYZED

Dependent variables

The two measures of "prevention" stated on pages 1 and 2 are the dependent variables analyzed. In other words, we will attempt to explain the county-by-county variances in rates of total juvenile arrests and rates of children dropping out of school.

Independent variables

Two types of independent variables were used to attempt to explain the variances in county rates of juvenile arrests and dropouts.

- Socio-economic variables

A variety of socio-economic factors are assumed to relate to a high incidence of human problems. Many of these factors are said to reflect such sociological concepts as the "culture of poverty", and "family disruption".

Fortunately, there is an abundance of information of this type available for each of Maine's 16 counties. The variables used included:

*

The answer was, by the way, yes.

1. Urbanization (% population living in Urban Areas);
2. Poverty (children living in families below poverty as % population under 18);
3. Divorce (divorces as a % of marriages);
4. Children living in single parent families as % population under 18;
5. Home ownership (% housing units occupied by owner);
6. Residential mobility (% housing units moved into during 1965-1975);
7. Median family income ;
8. White collar workers (as a % of employed civilian labor force); and
9. Unemployment (persons unemployed as % civilian labor force).

The first four variables came from materials shared with us by the Children and Youth Services Planning Project. Variables 5-9 were derived from County and City Data Book, 1972.*

There are two reasons to use these variables. One purpose is to test some commonly voiced opinions about the relationships between these factors and delinquency. The other purpose is, given the discovery of any significant relationships and appropriate causal inferences, to provide the

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U.S. Department of Commerce, Social and Economic Statistic Administration, Bureau of the Census.

Commission with information that may help focus prevention programs on specific target groups or areas.

Another variable we have included, called "police", is the number of full-time law enforcement officers per 1,000 population.* While this is not strictly a "socio-economic variable, it has been suggested as a possible factor biasing arrest reports, and is certainly worth analyzing.

- Human service variables

Persons planning services for children and youth should be interested to discover whether there are any significant relationships between various service measurements and rates of juvenile arrests or dropout rates. Presumably, an effective statewide program would show that a higher level of one or another children's service would correspond to lower arrest rates and/or dropout rates. (Remember that we are not talking about the quality or effectiveness of any specific service agency or organization.)

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From: Crime in Maine, 1975, State of Maine, Department of Public Safety.

Eight variables were included to represent the level of various children's services in each county:

1. Child welfare caseload (number of children receiving services per 1,000 population under 18);
2. Foster care (number of licensed foster homes per 1,000 population under 18);
3. Homemaker Service (number of individuals; per 1,000 population);
4. Campership program (number of children receiving camperships per 1,000 population under 18);
5. Mental Health Service (number of children admitted to mental health clinics per 1,000 population under 18);
6. Special Education (number of pupils in special classes--excluding TMR--as % enrollment);
7. Low-income education (dollars for low income education per total enrollment); and
8. Student-teacher ratio (number of pupils enrolled per classroom teacher).

Although it is not really an indicator of service, we also included the number of individuals receiving AFDC as a % of total population.

ANALYSIS

Simple Correlations

The table attached to this paper is a "correlation matrix". This correlation matrix displays coefficients

calculated between each pair of variables included in the analysis. Only the lower half of the matrix is displayed because the upper half would show the same coefficients, but in reverse order. Note that all the diagonal cells of this table, if filled in, would read 1.000. This is because the diagonal represents each variable's correlation with itself--which is, of course, in each case a perfect, positive correlation.

Those coefficients that are significant at the .05 level or better are clearly marked on the table.

Correlations with the dependent variables

Interestingly, there is no significant relationship between our two dependent variables--juvenile arrest rates and school dropout rates (.3102). This lack of correlation does not in itself refute the hypothesis that dropouts are more likely to become delinquent. Rather, it simply tells us that knowing a county's dropout rate will not help us predict its delinquency rate.

There are several significant correlations with juvenile arrest rates:

<u>Variable</u>	<u>Correlation Coefficient</u>
Urbanization	.7841
Median Income	.5677
Divorce	.5589
Single Parent Families	.5717
Home Ownership	-.7625
Residential Mobility	.5565
Police	.7108
Mental Health	.6226

On the face of it, most of these correlations would appear to support some of the sociological concepts about "family disruption" (divorce, single parent families) and "anomie" of modern life (urbanization, residential mobility, and the negative relationship to home ownership) being the conditions that spawn delinquency. However, the positive correlation between juvenile arrest rates and median family income--implying that wealthier counties may be expected to have higher juvenile arrest rates is puzzling.

It is disappointing to see that only one significant correlation arose between our service variables and juvenile arrests: mental health (.6226). While this positive relationship could be interpreted as overall ineffectiveness of mental health programs (the higher the level of mental health effort, the higher the arrest rate), it is also possible that the relationship is reversed: the multiple problems represented by high juvenile arrest rates also lead to more mental health referrals. The lack of significant correlation between mental health service and any of the other service or socio-economic variables means that we had to exclude mental health from our causal model (see this paper, pp. 18-22).

The other dependent variable--rate of school dropouts--shows only one significant correlation: camperships (.6158). Thus, counties having high dropout rates also award the most camperships!

Correlations among socio-economic variables

In addition to the significant correlations with juvenile arrests (discussed above) socio-economic variables show some highly significant inter-correlations:

Urbanization correlates significantly with:

Median income	(.5560)
Divorce	(.5516)
Home ownership	(-.9292)
White collar work force	(.4993)
Residential mobility	(.8017)
Police	(.4999)

Poverty correlates significantly with:

Median income	(-.8640)
Low income education	(.9661)

Median income correlates significantly with (in addition to urbanization and poverty, shown above):

Home ownership	(-.6564)
White collar work force	(.6292)
Residential mobility	(.6530)
Unemployment	(-.7919)
Police	(.5421)
Low income education	(-.8220)

Divorce correlates significantly with (in addition to urbanization, shown above):

Single parent families	(.6127)
Residential mobility	(.5109)
Foster care	(-.5354)

Single parent families correlates significantly with (in addition to divorce):

Police (.5246)

Home ownership correlates significantly with (in addition to median income and urbanization, shown above):

Residential mobility (-.7970)

Police (-.5497)

White collar work force correlates significantly with (in addition to median income and urbanization, shown above):

Residential mobility (.5505)

Police (.6216)

Residential mobility correlates significantly with (in addition to white collar work force, home ownership, divorce, median income, and urbanization, shown above):

Unemployment (-.5932)

Unemployment correlates significantly with (in addition to residential mobility and median income, shown above):

Low income education (.6098)

Police correlates significantly with (in addition to white collar work force, home ownership, single parent families, median income, and urbanization, shown above):

Foster care (-.5517)

The inter-relationships among the socio-economic variables and between the socio-economic variables and some of the service variables (low income education and foster care) suggest many questions about family life, mobility, and the social and economic structure of Maine's counties. Further research might use these and other

similar variables to construct a detailed model of the state, perhaps using cluster or factor analysis. For our purposes, however, the relationship suggested by these correlations will be used in the section on partial correlation to develop and test causal models of delinquency and school dropouts.

Correlations among human service variables

The discussions above revealed only two significant correlations between our dependent and service variables--juvenile arrests and mental health (.6226), and dropouts and camperships (.6158). In addition, there are only five significant correlations between socio-economic and human service variables--Poverty and low income education (.9661), median income and low income education (-.8220), divorce and foster care (-.5354), unemployment and low income education (.6089), and police and foster care (-.5517).

What inter-correlations exist among the human service variables?

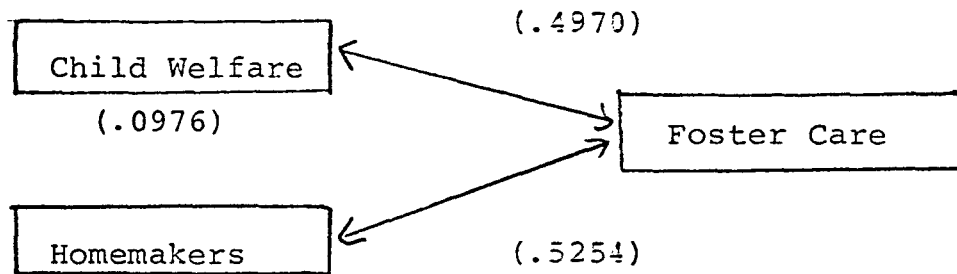
Mental health, AFDC caseload, camperships, homemakers, low income education, and pupil-teacher ratios were not significantly correlated with any other human service variable.

However, foster care and homemakers showed a positive correlation (.5254) as did child welfare and foster care (.4970). Inexplicably, child welfare was significantly negatively related to special education--the higher the child

welfare caseload, the lower the proportion of children enrolled in special education.

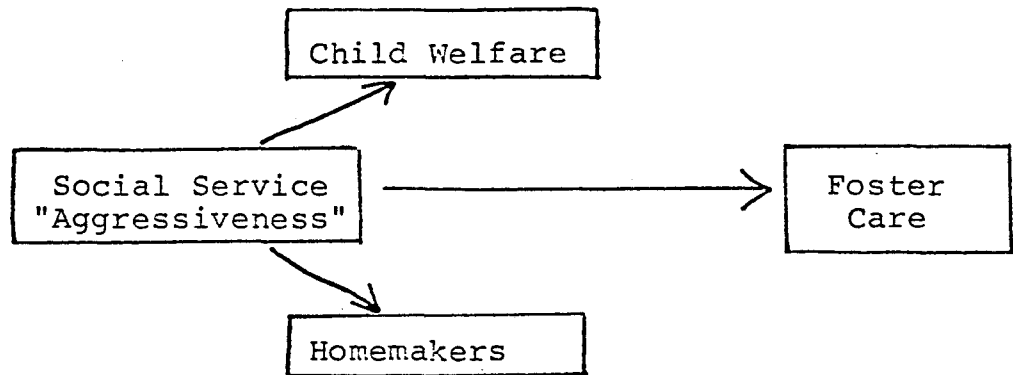
Thus, the human service variables do not look very promising as factors for inclusion in our causal modeling. This finding is disappointing because we had hoped to construct a model showing interaction between socio-economic conditions and service effort levels to explain delinquency and dropout rates.

The data regarding homemaker service, child welfare, and foster care, however, shed some light on the dynamics of the welfare system. The relationships can be illustrated:



The positive, significant relationships between child welfare and foster care, and between homemakers and foster care, while child welfare and homemakers remain insignificantly correlated, probably reflects the structure of the welfare system. Foster care homes serve both adults and children; child welfare services serve children, while homemaker services are provided to adults (although children may benefit from these services).

Thus, it is possible that all three variables result from a fourth variable for which we have no measure-- the level of effort or aggressiveness of the county welfare and social service departments. The resulting model might look like this:

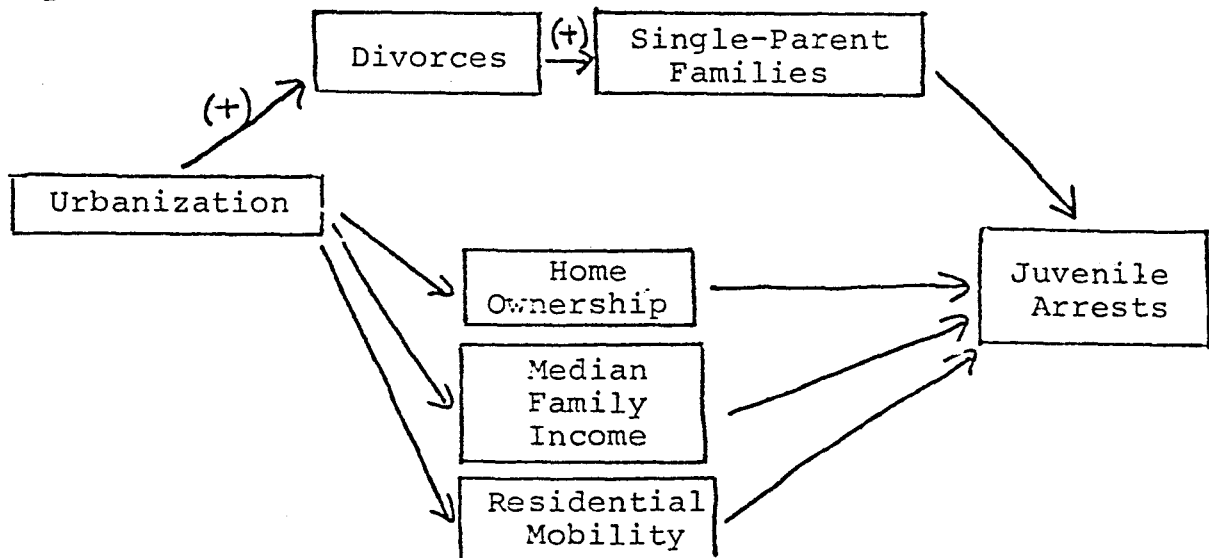


The section below uses the significant coefficients to develop and test a causal model that should help the Commission evaluate proposals for preventing delinquency and dropouts.

Partial Correlations and Causal Modeling

We know that juvenile arrests are significantly correlated with the eight variables on page 12. Many of these variables are also significantly correlated with each other. We would like to identify those variables that may be considered the more "immediate" causes of juvenile arrests, and to eliminate other variables from the causal model. For instance, the juvenile arrest rate is most highly correlated with urbanization, but it is also highly correlated with other variables--home ownership,

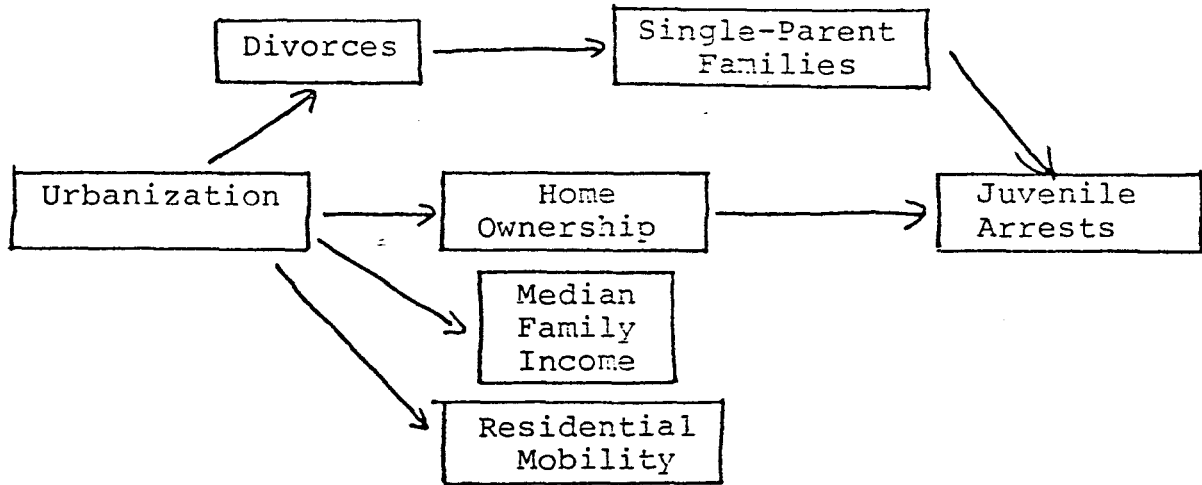
single parent families, divorces, median family income, and residential mobility--which are also all significantly correlated with urbanization. Can some of these other variables be the "intervening" variable which explain how urbanization affects the juvenile arrest rate? Does urbanization, for instance, affect the juvenile arrest rate through its effect on the divorce rate, on the extent of home ownership, on median family income and residential mobility? Does the divorce rate directly affect the juvenile arrest rate, or does it affect it indirectly by causing an increase in the number of single parent families? Schematically, we are asking if this is the way these variables are inter-related:



We can test all or parts of this 'causal model' using partial correlation analysis. If the model is valid, we would predict that certain partial correlation coefficients--those between variables not directly connected by arrows

in the model--will approach zero if we hold constant common antecedent causal variables. Thus, we would predict that the partial correlation between juvenile arrests and divorces, holding constant urbanization and single-parent families, approaches zero, and that the partial correlation between juvenile arrests and urbanization, holding constant single parent families, home ownership, median family income, and residential mobility approaches zero:

The actual partial correlation coefficients are, respectively, .0935 and .0959. Given the possibility of measurement error, these coefficients are small enough for us to accept this model provisionally. However, it may be possible to further simplify the model by eliminating some of the "arrows" that we have used to imply causal relationships. Specifically, can we eliminate the arrows connecting residential mobility to juvenile arrests, and connecting median family income to juvenile arrests? Eliminating these arrows would show that what we are asking is whether the correlation between each of these two variables and juvenile arrests is a "spurious" correlation, resulting from the fact that residential mobility, median income and juvenile arrests all vary with urbanization. Schematically, we are proposing this model:



We are predicting that the partial correlation between urbanization and juvenile arrests, holding constant only two variables--single parent families and home ownerships--will be zero. In fact, it is very close to zero: $-.0095$.

This finding confirms that the proposed model is acceptable, given available data and what we know about the system. This does not mean that other models of equal plausibility cannot be proposed and tested.

There are obvious implications for recommendations to implement and expand "preventive" services;

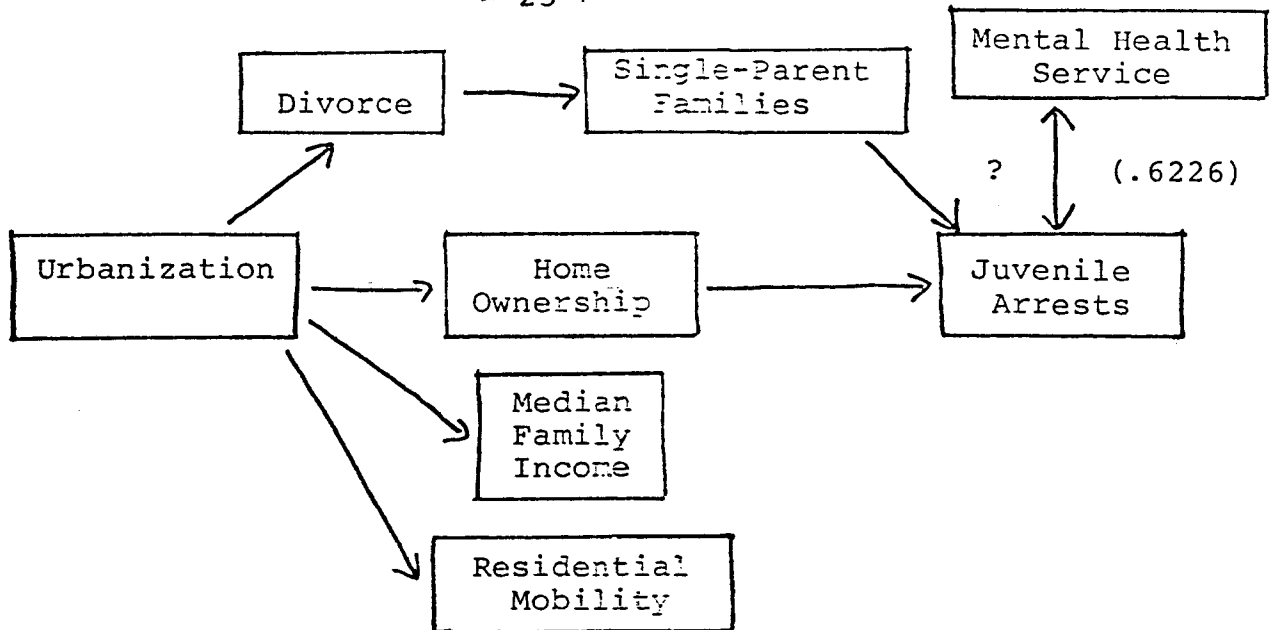
- Such programs might be concentrated in counties having high numbers of single parent families and low rates of home ownership;
- Services might be designed to remediate whatever problems are associated with a high incidence of single parent families;

- More in-depth research should be undertaken to verify that it is indeed the children of single parent families who become delinquent (The data here do not prove that this is the case.); and
- The Commission might want to ask participants at its hearings about the possible reasons for the apparent negative relationship between home ownership and delinquency, especially since poverty and income factors are not involved in this relationship.

The lack of significant correlations that would permit us to link human service variables to socio-economic variables and to juvenile arrests precluded the introduction of service variables into the causal model.

However, recall that there was one significant, positive correlation between mental health service and juvenile arrests (.6226). This relationship appears to be independent of the other causal linkages in the model, and, in fact, independent of any of the other variables analyzed.

Thus, our model can be elaborated by the introduction of one more unexplained relationship, which is represented by the two-way arrows between mental health service and juvenile arrests:



Commission members might ask participants at the hearings:

- How the relationship between mental health service and juvenile arrests might be interpreted ; and
- What data might be used to help us explain this phenomenon?

In the introduction of this paper we proposed to discuss prevention in terms of what is to be prevented. We singled out juvenile arrest rates and school dropout rates as measures of two problems that might be targets of preventive services. The juvenile arrest rate was significantly correlated with several socio-economic variables, it was possible to construct a causal model suggesting which of these socio-economic variables were the immediate determinants of juvenile delinquency. On the basis of this model we suggested where preventive services

might be directed and proposed areas of follow-up questioning and research. The same could not be done with the school dropout rate, a variable which was not significantly correlated with any of our socio-economic variables or with juvenile arrests. This analysis alone does not permit us to identify determinants of a high dropout rate, to suggest where preventive services should be directed or to say what type of preventive services might be effective.

The highest dropout rates are in Lincoln, Cumberland, Sagadahoc, Kennebec, Waldo, Knox and York counties, a cluster of counties on the south-eastern coast. The dropout rate falls as we move away from this south-eastern cluster. It may be that there is some variable or variables for instance, opportunities for juvenile employment, or other incentives to leave school, which will explain this geographical pattern in the school dropout rates.

Perhaps the Commission can elicit some suggestions for explaining this pattern as well.

ATTACHMENT

Lower Half Correlation Matrix:
20 Variables relating to cause
and prevention of juvenile arrest
and school dropout rates
(all correlation coefficients 10^{-4})

	JA	DO	Urb	Pov	Med	Div	SPF	HO	WC	RM
JA	3102									
DO	1742									
Urb	7841		-3630	-8640						
Pov	-4074		5560	-2744	4355	6127				
Med	5677	4044	5516	-1584	2527	-3896				
Div	5589	3638	4848	4768	-6564	3750				
SPF	5717	4567	-9292	-4008	6292	5109	-3012			
HO	-7625	-1520	4993	-4236	6530	-2520	1410			
WC	4035	4853	8017	6889	-7919	3770	3360	-4785		
RM	5565	0883	-4256	-4592	5421	4569	1410	-7970	5505	
Unem	-2694	-3593	4999	-2800	3731	4402	-2520	4297	-3831	-5932
Pol	7108	3750	4953	-2800	3731	4569	5246	-5497	6216	4716
MI	6226	4311	4953	-2800	3731	4569	4402	-4463	3511	1447
AFDC	1192	-0375	0630	2922	-1986	3514	4679	0621	-4290	-1003
Cam	2013	6158	2717	-2684	4124	2397	3522	-2951	4073	1309
Home	2222	-0446	4182	-0354	2373	0775	0783	-3789	2759	3199
Foster	-4190	-3555	-1739	3366	-2820	-5354	-2255	1550	-3433	-2105
CW	-3378	-3581	-0602	-0557	-1561	-2177	0804	0156	-3326	-3161
SE	-0770	4543	-3243	3222	-0564	-0708	-0933	3249	0.00	-0667
LIED	-4318	-1146	-3023	9651	-8220	-3064	-1744	3843	-3806	-3464
PE/CT	-0724	-2235	-2136	0481	-0347	-2799	-1304	1111	-4930	-1969

JA=Juvenile arrests
 DO=Dropouts
 Urb=Urbanization
 Pov=Children in families below poverty level
 Med=Median family income
 Div=Divorces
 SPF=Single-parent families
 HO=Owner-occupied housing units
 WC=White collar
 RM=Residential mobility
 Unem=Unemployed
 Pol=Police
 MH=Children admitted to Mental Health Clinics
 AFDC
 Cam=Camperships
 Home=Family home workers
 Foster=Foster care homes
 CW=Child welfare
 SE=Special Education
 LIED=Low income/educationally disadvantaged
 PE/CT=Pupils enrolled per classroom teacher

Unem	Pol	MH	AFCD	Cam	Home	Foster	CW	SE	LIED	PE/CT
-2449										
-0556	4283									
-0054	-1657	0989								
-2316	2845	4603	0294							
-3077	0017	1565	1285	1908						
1004	<u>-5517</u>	-3480	3415	0318	<u>5254</u>	<u>4970</u>	<u>-6479</u>			
0532	-3207	-0395	2773	1905	0976	0621	-0011			
-0019	-0823	-3016	0999	0519	-0942	3865		3273		
<u>6098</u>	-4519	-3627	2516	-2064	-0139	4089		1467		
0568	-2081	-2853	2610	0895	0048		2828		0309	

APPENDIX III

Maine's Current Statutory Provisions
Relating to the Right to Education*

*The descriptive review in this Appendix is excerpted from "Statutes of Maine's Juvenile Justice System" prepared for the Commission to Revise Statutes Relating to Juveniles by its staff in March, 1976.

Although the educational system was not specifically established to prevent juveniles from becoming offenders, it does seek to prepare children for a productive adult life. Thus, the purpose of education is to allow children to become useful citizens.¹

Education is "the very foundation of good government".²

Since Maine entered the Union, it has sought to guarantee children the right to an education.³ Thus the Legislature has the "duty" to require that towns make "suitable" provisions for maintaining public schools.⁴

¹ Under Article VIII of the Maine Constitution, education is viewed as "essential to the preservation of the rights and liberties of the people".

² Sawyer v. Gilmore, 109 Me. 169, 181, 83 A.673 (1912).

³ Constitution of the State of Maine, Article VIII. Although Maine did not become a state until 1820, the importance of education was presumably established at a much earlier date through its association with Massachusetts. Massachusetts adopted the first school law in 1647 which required the towns to provide schooling for the children. Bremner, R., Children and Youth in America, Vol. 1, 80-81 (1971).

⁴ However, this guarantee has been judicially limited. Thus, the "duty" of the Legislature is not enforceable in court. Sawyer, supra. Similarly, the "suitability" of the provisions must depend on the necessities of changing time. Id. at 184. Finally, this Article does not prohibit the Legislature from acting independent of mandates to the towns. McGary v. Barrows, 156 Me. 250, 256, 163 A.2d 747 (1960).

It has been found that all laws relating to education must be construed to promote "universal" education.⁵ Basically this is accomplished by insuring that all children have the right to an education and that they have the right to reasonably benefit from this education.⁶ Furthermore, children must not be excluded or expelled from schools unnecessarily.

1. Right to an Education

In order to ensure that there actually exists a universal right to education, it is necessary to guarantee that all children have access to a free and available educational program. The right may not be so conditioned that the child in actuality is unable to exercise it.

By law, all children between the ages of 5 and 20 have the right to a free education in a public school, subject to certain conditions and limitations imposed by statutes or school

⁵ Shaw v. Small, 124 Me. 36, 40, 125 A.496 (1924).

⁶ Naturally, these rights are related. In fact, it may be argued that the right to an education implicitly implies that a learning process or benefit will occur. For the sake of clarity, we will distinguish the more physical concepts of the right to education (access, availability, cost) from the less tangible concept of benefit.

committees.⁷ Neither the municipality nor the school committee may impose conditions altering this right in a manner detrimental to the child.⁸ However, as we shall see, this right is substantially limited after the child finishes elementary school and enrolls in secondary school.⁹ Therefore, it will be necessary to consider these schools separately.

7

20 M.R.S.A. Section 859 (Supp. 1975). The conditions and limitations which allow a child to drop-out of school or which allow the school to expel or exclude a child will be considered subsequently.

8

See, 1963-64, Op. of the Me. Atty. Gen. 145, 147,^a in which he reasoned that municipalities could not increase the age at which an educable mentally retarded child was eligible for the necessary special classes. Also, see 1961-62 Op. of the Me. Atty. Gen. 94^a in which marriage was held to be an insufficient reason for excluding a child from school.

a) Opinions of the attorney generally are not binding in court, but do present a reasoned interpretation of the law.

9

Although the statute defines junior high school as including at least two consecutive grades between six and nine, no special provisions are made for these students. 20 M.R.S.A. Section 1282 (Supp. 1975). In fact, some of the statutes distinctly specify that secondary schools are grades nine through twelve. See, 20 M.R.S.A. Sections 1053, 3712 (Supp. 1975). Obviously this can lead to disparities within the same school. For the sake of clarity, we shall refer to elementary school as grades one through eight and high school as grades nine through twelve.

a. Elementary School

Any child who has attained the age of six years by October 15 may enroll in a public school.¹⁰

Under a complex set of laws the state has established schools for the child to attend and procedures for determining which school he should attend. The state is divided into school administrative units, based on the diverse situations which exist throughout the state.¹¹ Basically, such administrative units seek to promote the equality of educational opportunity while maintaining the feasibility of attendance.¹²

¹⁰ 20 M.R.S.A. Section 859 (Supp. 1975). Although children have the right to attend school at age five, there is no provision requiring the administrative unit to provide them with kindergarten or other suitable facility.

¹¹ The actual procedure for dividing the state into administrative units is beyond the scope of this paper. For statutes directing this procedure see 20 M.R.S.A. Sections 211 et seq., 351 et seq. Provisions are also made for special educational districts, regional vocational schools and agreements with New Hampshire and the Province of Quebec. For case law sustaining the legislature's power to enact such division see Beckett v. Roderick, 251 A.2d 427, (Me. 1969).

¹² 20 M.R.S.A. Section 211 (1965).

Each administrative unit has the obligation to provide students in the unit with an adequate education as defined by law.¹³ If the unit fails this duty, then the state may act to enforce the obligation.¹⁴

Normally, a child will attend the public school in the administrative unit in which his parent or guardian resides.¹⁵ This residence is defined as the place in which his father, legal guardian or, if he parents are separated, the person having custody, maintains his home.¹⁶ Maintaining a home means providing, supporting or sustaining a home.¹⁷

¹³ 20 M.R.S.A. Section 854 (1965).

¹⁴ Id. If the unit fails in its duties to raise and expend school money, employ certified teachers, provide suitable textbooks, faithfully expend school money received from the state or comply with laws establishing other duties, then the Governor or his Council may direct the State Treasurer to withhold funds in an amount deemed "expedient".

¹⁵ 20 M.R.S.A. Section 859 (Supp. 1975).

¹⁶ Id.

¹⁷ Thus when the father taught and lived in New York, except during vacations, he failed to maintain a home in Maine although he voted and paid taxes in Maine. 1963-64. Op. of the Me. Atty. Gen. 59.

However, if the child is in the custody of another person because of a broken or intolerable home, the Commissioner of Education shall determine the child's residence.¹⁸

Similarly, the head of a state institution may enroll an institutionalized child in school where the institution is located.¹⁹

If the child's parents move from place to place "in pursuit of their occupations", then the child may attend school either at the place of temporary residence or at the permanent residence.²⁰ Other provisions provide for children who reside on the property of the federal government²¹ and in the unorganized territory.²²

¹⁸ 20 M.R.S.A. Section 1291 (Supp. 1975). Thus in Shaw v. Small, 124 Me. 36, 125 A.496 (1924), the court held that a 13 year old child could not be excluded from school because he lived as a ward of the State and not with his parents.

¹⁹ 20 M.R.S.A. Section 859 (Supp. 1975).

²⁰ 20 M.R.S.A. Section 861 (1965).

²¹ 20 M.R.S.A. Section 1457 (1965). But 20 M.R.S.A. Section 860 (Supp. 1975) specifically allows children residing on lighthouses to attend any public school.

²² 20 M.R.S.A. Section 1453 (Supp. 1975). When the Commissioner finds it "expedient", the child may be sent to any school including those in the Province of Quebec.

When the child lives at such a distance that conveyance is "necessary", the administrative unit usually has the obligation to convey him to school.²³ Similarly, when boarding is deemed to be in the child's best interest, the administrative unit must pay to board the child.²⁴ If the temporary residence of a child whose parents move from place to place, is more than two miles from the nearest school, then the administrative unit must either transport or board the child.²⁵

b. Secondary Schools

The right to attend secondary school is not as strong as the right to attend elementary school. Thus, although the child has a broader

²³

20 M.R.S.A. Section 220 (Supp. 1975).

If the child is domiciled on an island without a public school, then the administrative unit must pay for either transporting or boarding the child. However, if the child is domiciled on the mainland remote from the schools or public highways, then the parent has the obligation to transport or board the child. Id.

²⁴

Id.

²⁵

20 M.R.S.A. Section 862 (1965).

range of schools to attend, there are also more restrictions accompanying such attendance.²⁶

If his parents reside in a unit which provides a public school or access to an approved high school,²⁷ then the child may attend such school.²⁸ But if the unit does not provide access to an approved secondary school, then the child may attend any approved secondary school if he is able to gain admission to it.²⁹

²⁶ For a discussion of the conditions which the child must fulfill in order to receive free tuition, see discussion at footnotes 57-58.

²⁷ Access to high school may be provided by contracts made with a nearby administrative unit or the trustees of any academy located within such town or in any nearby town. 20 M.R.S.A. Section 1289 (Supp. 1975). Academies are discussed later at the text following footnote 33.

The Commissioner of Education may approve any high school if it meets certain specified requirements as listed in 20 M.R.S.A. Section 1281 (Supp. 1975).

²⁸ 20 M.R.S.A. Section 859 (Supp. 1975). The concept of residence is the same for elementary and high school. For a discussion of this concept, see the text at footnotes 15 through 22.

²⁹ 20 M.R.S.A. Section 1291 (Supp. 1975). Unfortunately, the law does not specify the standards which may be used in granting or denying admission. Under prior law, the student was required to take an examination. This examination was limited to showing that the youth had passed elementary school and could benefit from the program offered. 1959-60 Op. of the Me. Atty. Gen. 93, 94. Although this law has been repealed, it may be that the same requirements are in effect now.

Likewise, if the secondary school in his unit does not offer certain specified programs of study, a child may attend another secondary school provided he meets the requirements for admission to his public school and gains admission to the other school.³⁰ This section allows the child to obtain an adequate education furnished by the administrative unit.³¹ Whenever it is deemed necessary, he may be either conveyed to school or boarded at public expense.³²

i. Academies

Academies are basically high schools run by private trustees for use by the administrative unit as a free public high school.³³ The school committee must determine the qualifications which an applicant must meet to be entitled to attend

³⁰ 20 M.R.S.A. Section 1291 (Supp. 1975).

³¹ Albert v. Inhabitants of Town of Winslow, 286 A.2d 600, 602 (Me. 1972).

³² 20 M.R.S.A. Section 220 (Supp. 1975). The same exceptions regarding domicile occurs for the secondary school student as for the elementary school student. See footnote 29.

³³ 20 M.R.S.A. Section 1341 (1975).

such academy.³⁴ All students who are domiciled within the administrative unit and who meet the qualifications may attend the academy without paying tuition.³⁵

ii. Vocational Schools

The state may establish state vocational institutions to provide specialized training for persons who give evidence of special aptitude or need and who desire specialized training in trade, industry or commerce.³⁶

Furthermore any administrative unit may establish a regional center for vocational or technical education subject to the approval of the State Board of Education.³⁷ These schools shall offer education and training in trade, industry, agriculture, business and distributive, technical and services occupations at the secondary level.³⁸

³⁴ 20 M.R.S.A. Section 1343 (1975).

³⁵ Id.

³⁶ 20 M.R.S.A. Section 57 (Supp. 1975).

³⁷ 20 M.R.S.A. Section 2356 A(1)(2) (Supp. 1975).

³⁸ 20 M.R.S.A. Section 2356 A(3) (Supp. 1975). Programs also are included for drop-outs and post-secondary school students.

Any person qualified to attend secondary school may attend the regional technical and vocational center in his area provided he is qualified to profit from the school and the school can accommodate him.³⁹ If the school in his region does not offer a specific course of study, then the child may seek admission to any other program.⁴⁰

iii. Industrial Schools

The administrative unit may also establish a general industrial school for teaching agriculture, household sciences, mechanical arts and the trades.⁴¹ In order to attend the child must have completed elementary school or be at least fifteen years old.⁴² However, there is currently no provision in the law to reimburse the administrative unit for such schools.⁴³

³⁹ 20 M.R.S.A. Section 2356-F (Supp. 1975). The same standards for admission must apply to all students including both those from the area and those not from the area.

⁴⁰ Id.

⁴¹ 20 M.R.S.A. Section 2405 (Supp. 1975).

⁴² Id.

⁴³ Id.

c. Free and Available Education

In order to ensure that the education is actually available to all children, provisions must be made to guarantee that it is free. Not only must there be no tuition or fees, but there must also be no hidden expense.⁴⁴

In Maine the administrative unit is required to provide the school books, apparatus and appliances which are necessary for the pupil's use.⁴⁵ But, the school committee may make rules, not repugnant to the law, for the distribution and preservation of these books.⁴⁶ Moreover, if the student loses, destroys or unnecessarily injures such books or supplies, then the parent must pay the damages.⁴⁷

⁴⁴ See, Children Out of School in America (Cambridge, Mass. 1974) at pp. 78-79 for a discussion of this problem.

⁴⁵ 20 M.R.S.A. Section 856 (Supp. 1975). Failure to provide these supplies is sufficient reason for the state to withhold funds. See footnote

⁴⁶ 20 M.R.S.A. Section 857 (1965). It is unclear whether these laws allow the committee to require a deposit or rental fee for the use of the books.

⁴⁷ 20 M.R.S.A. Section 3774 (1965).

The child is also required to pay for attending a summer school, even if such attendance may be necessary for his educational progress.⁴⁸ However, the rate charged must be the same for all children who are legal residents of Maine.⁴⁹

As previously indicated a parent who domiciles his child on the mainland remote from the school or public highway must provide transportation or board.⁵⁰

In order to attend public secondary schools without paying tuition, a child must fulfill certain conditions. First, he must have completed elementary school.⁵¹ Furthermore, he must maintain a "satisfactory standard of deportment and scholarship" including regular attendance.⁵² If he fails to meet these requirements, it may be assumed that his parents must pay for his compulsory education.

⁴⁸
⁴⁹ 20 M.R.S.A. Section 859 (Supp. 1975).

Id.

⁵⁰
20 M.R.S.A. Section 220 (Supp. 1975).

⁵¹
20 M.R.S.A. Section 1291 (Supp. 1975).

⁵²
Id.

2. Right to Benefit

The child also has the right to reasonably benefit from his education. Thus, he must have the physical, mental and emotional facilities necessary for the educational program. Furthermore, the child must have sufficient skills and training for the program. When it is determined that a child is unable to benefit from the program in which he is enrolled, a viable educational alternative must be available which will allow him to realize his educational potential.

a. All Children

Obviously, the easiest task is to ensure that an otherwise "normal" child has no physical or mental problems which may impede his progress. Thus, all schools are required to have a school physician who will examine and diagnose all children referred by teachers.⁵³

The school can require the parent to secure treatment for the child, if the child is a bearer of vermin or parasites or if he

⁵³ 20 M.R.S.A. Sections 1131-38 (1965 as amended through 1975).

has an infectious or contagious disease of the skin, mouth or eyes.⁵⁴ The school must also examine students for defective sight or hearing and notify their parents if there is such defect.⁵⁵ Furthermore, schools are required to participate in the school lunch program,⁵⁶ under the Child Nutrition Act.⁵⁷ However, children in grades nine through twelve need not be included in the program.⁵⁸

Currently, the only provision for dealing with a child's mental or emotional problems is the school guidance counselor.⁵⁹ A school counselor is defined as a person employed by the school who is either certified by the Department of Education or has a Master's Degree in guidance and counseling.⁶⁰

⁵⁴ 20 M.R.S.A. Sections 1013-14 (1965).

⁵⁵ 20 M.R.S.A. Sections 1135-38 1965 as amended through 1975. This sections provides an interesting variation on the usual religious exemption by allowing examination if there are reasonable and apparent grounds to suspect the defect. 20 M.R.S.A. Section 1135 (Supp. 1975).

⁵⁶ 20 M.R.S.A. Sections 1051 et seq. (Supp. 1975).

⁵⁷ 42 U.S.C.A. Sections 1751 et seq. (1946) as amended through 1975.

⁵⁸ 20 M.R.S.A. Section 1053 (Supp. 1975).

⁵⁹ Actually, there is not statute requiring schools to have counsellors. In fact, the only statute is based on establishing the privilege of counsellor-client.

⁶⁰ 20 M.R.S.A. Section 806 Supp. 1975).

Presumably, the counsellor will be available to discuss the mental and emotional problems of the child. The confidentiality of such conversations is protected by statute.⁶¹ Thus, the counsellor is not normally required to divulge any information he has gathered relating to a child who is his client or the person having custody of the child.⁶² However, if the condition of the student requires that others assume responsibility for him or if there is a clear and imminent danger of harm to the student, then the counsellor must report to the appropriate authority or take emergency measures as required.⁶³

There is also some provision made to guarantee that the child has the skills necessary to effectively participate in the

⁶¹ Under 20 M.R.S.A. Section 805 (Supp. 1975), the child is protected by the Privacy Act of 1974, 5 U.S.C.A. Section 552a (1974). Thus Act specifies that the agency may only keep relevant and necessary information. Such information may be disclosed only to certain government agencies or for certain uses, unless the individual gives his written consent for additional disclosure.

⁶² 20 M.R.S.A. Section 806 (Supp. 1975).

⁶³ Id.

educational program. Thus, although English is the basic language in all schools, the Commissioner of Education must also cooperate with the Federal Government to carry out programs of bilingual education.⁶⁴ However, these programs are only for those areas which have a high concentration of non-English speaking people.⁶⁵

b. Handicapped Children

A more difficult task is to ensure that children with specific handicaps receive the opportunity to benefit from their educational experience. Until 1975, Maine allowed to local school committees to excuse from compulsory attendance any child whose physical or mental condition made it inexpedient for him to attend school.⁶⁶ However, now the state seeks to provide an "equal educational opportunity for all children."⁶⁷

⁶⁴

20 M.R.S.A. Section 102(16) (Supp. 1975).

⁶⁵

Id.

Local communities may also provide early childhood programs in bilingual education for less than five years in order to "ehance (the) learning potential" of the children.

⁶⁶

20 M.R.S.A. Section 911 was amended by Chapter 510, Section 21 of the Acts of 1975 on June 17, 1975 which repealed the authority of the school committee to excuse such students. Now such attendance is mandated under the general statute, 20 M.R.S.A. Section 859 (Supp. 1975).

⁶⁷

20 M.R.S.A. Section 3121 (Supp. 1975).

The Commissioner of Education is required to provide all "exceptional children" with the education and services which are appropriate to their needs.⁶⁸ Such exceptional children include those persons between the ages of five and twenty who are mentally or emotionally handicapped, learning disabled, hearing, sight, speech or language impaired, physically handicapped or multipli-handicapped.⁶⁹

Each administrative unit has the duty to identify such exceptional children and to plan and implement a program for each such child geared to his needs.⁷⁰ In making this identification, the administrative unit must afford the child the rights of due process as established by the Commissioner.⁷¹

⁶⁸ 20 M.R.S.A. Section 3122 (Supp. 1975).

⁶⁹ 20 M.R.S.A. Section 3123(1) (Supp. 1975). The Department of Human Services also has the authority to locate, diagnose and treat crippled children in cooperation with the Federal Government. 22 M.R.S.A. Sections 2000-02 (1965 as amended through 1975). Blind children come under the Division of Eye Care. 22 M.R.S.A. Sections 3500-02 (Supp. 1975).

⁷⁰ 20 M.R.S.A. Section 3131 (Supp. 1975). However, the parent may object to the diagnosis and treatment of his child on religious grounds. 20 M.R.S.A. Section 3128 (Supp. 1975). Compare this statute with 20 M.R.S.A. Section 1135 (Supp. 1975), which allows examination over religious objection if there is reasonable and apparent grounds to suspect a hearing or sight defect.

⁷¹ 20 M.R.S.A. Section 3128 (Supp. 1975). Although the exceptional child is not specifically granted the right of privacy, presumably the general grant to all children applies to him. See footnote 61 for a discussion of this right.

After an exceptional child is identified, the administrative unit must provide him with appropriate education and training according to the plan geared to his needs.⁷² This program may include regular and special education and such corrective and supportive services as are deemed necessary.⁷³ Special education includes all forms of instruction which meet the needs of the child as defined by the Commissioner of Education.⁷⁴

When the administrative unit does not provide the necessary special education or services, transportation must be provided for the child to and from any school which does provide this special education.⁷⁵ However, if boarding is in the best interest of the child, then the unit must pay for such board.⁷⁶

Tuition may be paid for any child to allow him to attend an approved secondary school in

⁷²
²⁰ M.R.S.A. Section 3127 (Supp. 1975).

⁷³
²⁰ M.R.S.A. Section 3122 (Supp. 1975).

⁷⁴
²⁰ M.R.S.A. Section 3123 (Supp. 1975).

⁷⁵
²⁰ M.R.S.A. Section 3561 (Supp. 1975).

⁷⁶
Id.

another state which specializes in the correction of physical defects, provided this specialized training is not available in Maine.⁷⁷ Likewise, the Division of Eye Care may send a blind child whom it deems to be a "fit subject for education" to any school qualified to provide suitable education.⁷⁸

Handicapped or otherwise disadvantaged children are also eligible to receive vocational training under the Rehabilitation Act.⁷⁹ A handicapped individual is defined as a person who has a mental or physical disability which causes a substantial handicap but who may be expected to be able to engage in gainful employment after the vocational rehabilitation.⁸⁰ Mental and physical disabilities are those which materially limit or will probably limit his activities or functions.⁸¹

⁷⁷ 20 M.R.S.A. Section 1291 (Supp. 1975).

⁷⁸ 22 M.R.S.A. Section 3502 (Supp. 1975). However, the parent or guardian must approve this action.

⁷⁹ 22 M.R.S.A. Section 3054-67 (Supp. 1975).

⁸⁰ 22 M.R.S.A. Section 3054(6) (Supp. 1976). Gainful employment includes not only profitable labor but also payment in kind, home-making, sheltered employment and home industries. 22 M.R.S.A. Section 3054(5) (Supp. 1975).

⁸¹ 22 M.R.S.A. Section 3054(6) (Supp. 1975).

A person may be considered disadvantaged not only because of a handicap but also because he is disadvantaged by youth, low educational attainments, ethnic or cultural factors, prison or delinquency records and other factors.

82

APPENDIX IV

Maine's Current Statutory Provisions
Relating to Truancy, Exclusion and
Expulsion*

*The descriptive review in this Appendix is excerpted from "Statutes of Maine's Juvenile Justice System" prepared for the Commission to Revise Statutes Relating to Juveniles by its staff in March, 1976.

Certainly the most comprehensive legislation concerning non-criminal misbehavior in Maine deals with the habitual truant.¹ This legislation provides several measures to prevent a child from becoming a truant.² However, a child is granted the opportunity to leave school voluntarily.

1. The Truant

Children between the ages of seven and seventeen are required to attend school while it is in session unless they have graduated from high school.³ A child is considered truant if he is absent for one-half day or more without a valid excuse.⁴ A child is habitually truant if he is habitually or willfully absent from school; fails to attend school for five day sessions or ten half-day sessions within any six months without sufficient excuse; or fails to attend school, without a regular and lawful occupation, and is growing up in ignorance.⁵

¹ The problems presented by children who drop-out from school are directly related to this issue.

² Certainly one of the purposes of many of the educational programs discussed in Section I is to prevent the child from becoming a truant or drop-out. This section will discuss only those programs specifically designed to deal with the truant or drop-out.

³ 20 M.R.S.A. Section 911 (Supp. 1975).

⁴ Id.

⁵ 15 M.R.S.A. Section 2502(2) (1965).

2. Enforcement of the Truancy Laws

These truancy laws are enforceable against both the child and his parents. Thus, a child who is an habitual truant falls under the jurisdiction of the juvenile court.⁶ Parents or other persons having the child "under their control" have the duty to insure that the child attends school.⁷ If such person fails this duty and is "in any way" responsible for a child's truancy, he may be fined not more than \$25 or imprisoned for not more than thirty days for each offense.⁸

Each administrative unit must select an attendance officer to enforce these laws.⁹ This officer must investigate all instances of alleged truancy which are reported to him.¹⁰ Whenever a teacher notifies

6

Id. See also 20 M.R.S.A. Section 914 (1965).

7

20 M.R.S.A. Section 911 (Supp. 1975). See also 20 M.R.S.A. Section 220 (Supp. 1975) which provides that a parent who fails to convey or board his child will be held liable for the child's truancy.

8

20 M.R.S.A. Section 911 (Supp. 1975).

9

20 M.R.S.A. Section 913 (Supp. 1975).

10

Id. If the attendance officer fails his duties, he also may be subject to a fine.

him of a child's "irregular attendance", the officer may search for the child and take him to school "when found truant".¹¹ If the child is an habitual truant, the officer may file an application for a petition of adjudication against him in the juvenile court.¹²

The officer must also inquire into instances of alleged failure on the part of parents to send their child to school, ascertain the reasons for this neglect, and report his findings to the school committee.¹³

If the committee so orders him, an attendance officer must file a petition against such parent in district court.¹⁴

He also must enforce the laws preventing persons from interrupting or disturbing teachers and defacing school buildings with obscene language.¹⁵ If a minor injures the school house, utensils or appurtenances or injures or destroys other property belonging to the

11

Id. This language poses certain problems of clarity and definition. For example one must ask whether irregular attendance is similar to habitual truancy. Furthermore, one must ask on what basis does an attendance officer determine whether the child is truancy or has a lawful excuse for his absence from school.

12

15 M.R.S.A. Section 2601 (1965).

13

20 M.R.S.A. Section 913 (Supp. 1975).

14

20 M.R.S.A. Section 913, 915 (Supp. 1975).

15

20 M.R.S.A. Section 3771-73 (1965).

administrative unit, then the officer may recover double damages from the child's parents or guardian.¹⁶

3. Positive Action Committees

Each administrative unit is required to establish a positive action committee to help reduce the problem of school drop-outs, potential drop-outs and habitual truants.¹⁷ These positive action committees are basically advisory boards that have the duty to develop a plan to reduce truancy and drop-outs, submit it to the school board and review the effectiveness of the plan adopted by the school board.¹⁸ Each school board must adopt a plan as part of its policy by December 31, 1976.¹⁹

These plans must deal specifically with certain aspects of the drop-out problem. Thus, they must consider the reasons pupils drop out of school and a system to contact recent dropouts and to provide them with educational and vocational opportunities.²⁰ They

¹⁶ 20 M.R.S.A. Section 3772 (1965).

¹⁷ 20 M.R.S.A. Section 917 (Supp. 1975).

¹⁸ 20 M.R.S.A. Section 917(4) (A) (B) (Supp. 1975).

¹⁹ 20 M.R.S.A. Section 917(4) (A) (Supp. 1975). There is no requirement that the plan adopted by the school board be the same as the one submitted by the positive action committee.

²⁰ 20 M.R.S.A. Section 917(4) (C) (Supp. 1975). A recent drop-out is a student who has voluntarily withdrawn from school within the last three years. 20 M.R.S.A. Section 917(1) (A) (Supp. 1975).

must also consider school policy relating to due process and suspension, expulsion and other forms of disciplinary actions.²¹ The plans must consider methods of training teachers and utilizing human service programs within the community to understand and assist dropouts.²² Finally, they must consider attitudes and practices within the school system which discriminate against students on ethnic, sex, racial or economic reasons.²³ However, there is no requirement that the plan include any procedure to change most aspects of the school system which the plans consider.

4. Children in the Labor Force

A child who does not want to attend school may be exempted from compulsory attendance if he obtains a work permit. Normally a child must meet certain statutory requirements before he may be granted such a permit. However, the laws also provide numerous exceptions which allow a child to work although he does not meet the specific requirements.

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20 MR.S.A. Section 917(4) (C) (5) (Supp. 1975).

22

20 M.R.S.A. Section 917(4) (C) (3) (4) (Supp. 1975).

23

20 M.R.S.A. Section 917 (4) (C) (6) (Supp. 1975).

These laws serve two purposes. First, they seek to regulate the type of work which a child may perform in order to prevent the child from being injured.²⁴ However, it is the second purpose with which we are more concerned: that is, these laws seek to insure that the child will have the opportunity to benefit from the educational system.

Usually a child under fifteen may not be employed in any business or service for hire during the hours that the public school in the town or city in which he resides is in session.²⁵ However, such a child may work if he is employed "directly by, with or under the supervision of either or both of his parents".²⁶

Similarly, a child under the age of sixteen may not be employed unless he has a work permit issued by the superintendent of the school in which the child resides.²⁷ However, this permit is not needed if the child is engaged in agricultural or household work or any occupation which does not offer continuous year-round employment.²⁸

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Thus, children under age fourteen and under age sixteen are forbidden from working in certain occupations. 26 M.R.S.A. Sections 771, 773 (1965).

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26 M.R.S.A. Section 771 (Supp. 1975).

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26 M.R.S.A. Section 771 (Supp. 1975). The child may also be employed in the school lunch program if he only serves food or cleans up the dining room.

27

26 M.R.S.A. Section 775 (1965).

28

Id.

In order to get the permit, the child must have a certificate from the principal of his school stating that the child can "read and write correctly simple sentences in the English language" and that he has completed elementary school or its equivalent.²⁹

However, a child between the ages of fifteen and seventeen, who is unable to satisfactorily meet these requirements because of his lack of mental capacity, may still receive a permit for non-hazardous employment.³⁰

The child must also submit a certified copy of his birth certificate, baptismal record or other document which establishes his age.³¹ In doubtful cases, a physician may issue a certificate that the child has attained the normal development for a child of his age, has sufficiently sound health and is physically able to perform the work which he intends to do.³²

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Id. A permit improvidently granted does not excuse the child from school attendance. 1959-60 Op. of Me. Atty. Gen. 24, 25.

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26 M.R.S.A. Section 775 (1965).

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Id.

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Id.

This permit must be kept on file by the employer and made available to the school attendance officer.³³ This officer has the authority, when directed to do so in writing, to visit any business during the hours when school is in session to ascertain whether any child under fourteen years is employed.³⁴ If any minors are employed in violation of the child labor laws of the state, the officer must file a report with the Bureau of Labor and Industry.³⁵

No child under sixteen who is currently in school may be employed for more than four hours on a school day or twenty-eight hours in any one week while school is in session.³⁶

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Id. and 20 M.R.S.A. Section 913 (Supp. 1975).

34

20 M.R.S.A. Section 913 (Supp. 1975). However, the statute does not give the officer the specific authority to investigate the premises to determine if minors fourteen and older are employed.

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Id. If the employer violates this act he may be fined \$25 to \$200. 26 M.R.S.A. Section 781 (1965). If the parent or guardian allows a child to be employed or falsely states the child's age, he may be fined \$10 to \$50. 26 M.R.S.A. Section 782 (1965). If the authority who grants the work permit fails to perform his duties, he may be fined \$25 to \$50. 26 M.R.S.A. Section 783 (1965). If a person certifies false statements, he may be fined \$25 to \$50. 26 M.R.S.A. Section 784 (1965).

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26 M.R.S.A. Section 774 (1965). If he is not in school, then he may work as much as forty-eight hours per week.

However, this prohibition does not apply if the child is engaged in agriculture or any occupation not offering continuous year-round employment if he is excused by the local superintendent in accordance with state policy.³⁷

When the child reaches the age of sixteen, it is much easier for him to leave school. The principal of his school may excuse him from school attendance if he believes that a "suitable program of work or work-study or training is available."³⁸ Both the consent of the child's parent or guardian and the approval of the school committee are needed.³⁹

5. Exclusion and Expulsion

A child may also be forbidden from attending school by the school committee or administrative unit. Such child may either be excluded or expelled

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Id. The state policy is established by the Commissioner of Education and the Director of the Bureau of Labor and Industry.

38

20 M.R.S.A. Section 911 (Supp. 1975). Such training programs include the apprenticeship program discussed in Appendix III and infra at note 55 and text. However, because of the discretion granted to the principal, he can probably allow any child who so desires to leave voluntarily.

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Id. An interesting question is presented by the truancy statute. Under that statute, a child is an habitual truant if he fails to attend school without a regular and lawful occupation. 20 M.R.S.A. Section 914 (1965). Therefore, it may be assumed that if the child becomes unemployed while he is under seventeen, he must return to school or face prosecution as a truant.

from school.⁴⁰ Although the child who is excluded or expelled is not a truant or a drop-out, such action by the school officials may increase the likelihood that he will become a truant or drop-out.⁴¹

Exclusion may occur if a child represents a threat to the health of others. Thus the school committee may usually exclude any child who has not been vaccinated for certain contagious or communicable diseases.⁴² If there is an epidemic, an unvaccinated child is excluded automatically.⁴³ Similarly, a child with a communicable disease is immediately excluded from school.⁴⁴ Such child may not be re-admitted unless he presents a certificate from

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Obviously the child who is excluded or expelled loses both the right to an education and the right to benefit from such education.

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Children Out of School in America, supra. at 117-47; Children's Defense Fund, School Suspensions - Are They Helping Children? (Cambridge, 1975).

42

20 M.R.S.A. Section 859 (Supp. 1975). However, the child need not be vaccinated if his parents object on religious grounds or his doctor indicates that the vaccination is not medically advisable.

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20 M.R.S.A. Section 473(6) (1965).

44

20 M.R.S.A. Section 1138 (1965).

the local health officer, family physician, or school physician that he no longer presents the danger of contagion.⁴⁵

Finally a child may be excluded whenever he is "a source of offense or danger to the other pupils" because of filthiness or because he has vermin, parasites, or an infectious or contagious disease of the skin, mouth or eyes.⁴⁶ His parent has the duty to cure, cleanse or disinfect the child as quickly as possible.⁴⁷

A child may be expelled from school when his behavior threatens to disrupt the functioning of the school.⁴⁸ The school committee may expel

⁴⁵ 20 M.R.S.A. Section 1134 (1965).

⁴⁶ 20 M.R.S.A. Section 1013 (1965).

⁴⁷ 20 M.R.S.A. Section 1014 (1965).

⁴⁸ Technically, the statute does not distinguish between suspension and expulsion. A child is usually suspended for a definite period of time with at least the theoretical intent of allowing the child to return, while expulsion anticipates that the child will not return. Children Out of School in America, supra. at 118. Maine, however, appears to use the word "expel" to mean a suspension for an indefinite period of time with the theoretical intent that the child may be allowed to return.

"any obstinately disobedient scholar" if it is necessary to ensure the "peace and usefulness" of the school.⁴⁹ Such authority is based on the premise that the parent has delegated to the teacher part of his traditional power to restrain and correct the child as necessary.⁵⁰ Thus, the teacher may direct the student to attend to his duties in any reasonable manner.⁵¹ However, the student may be expelled only if he is obstinately disobedient, and not merely refusing to obey a reasonable command.⁵²

Before the student may be expelled there must be a "proper investigation" of his behavior.⁵³ Although the scope of this investigation is not defined, it includes more than a complaint by a teacher.⁵⁴ The child may also be expelled from school if he belongs to a secret fraternity or society.⁵⁵

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20 M.R.S.A. Section 473(5) (1965).

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Stevens v. Fassett, 27 Me. 266, 279 (1847). Thus, the teacher may use a reasonable degree of force against a child who creates a disturbance. 17-A M.R.S.A. Section 106(2) (Supp. 1975).

51
Stevens, supra. at 281.

52
Id. at 280.

53
20 M.R.S.A. Section 473(5) (1965).

54
See Shaw v. Small, 124 Me. 36, 41, 125 A.496 (1924) in which the court indicated that a complaint by a teacher was sufficient reason for an investigation but was not an investigation.

55
20 M.R.S.A. Section 803 (1965). Unfortunately, the statute does not indicate what a secret society is.

The school committee has considerable discretion in determining whether a child may be readmitted. Thus, in order to gain readmission, the child must present "satisfactory evidence of his repentance and amendment." ⁵⁶

6. Further Education

A child who has left the formal educational system still has opportunities to receive an education in either vocational or academic subjects. This education may be obtained in one of several different programs. It is necessary to examine these programs to consider if the truant, drop-out or child in the labor force has the opportunity to receive an adequate education outside of the formal educational system.

a. Apprenticeship

One of the oldest methods of training, the apprenticeship system, is still available to children over sixteen.⁵⁷ Under this system, a person over sixteen may be employed according to the terms of a written agreement in which the employer agrees to provide him with a definite sequence of job training and related

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20 M.R.S.A. Section 473(5) (1965).

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26 M.R.S.A. Section 1001-7 (Supp. 1975).

instruction necessary for qualification as a journeyman in a particular trade.⁵⁸ Where possible, the Department of Education must establish formal education classes meeting at least 144 hours annually.⁵⁹

b. Industrial Education

Special provisions may be made for the education of persons between the ages of fourteen and eighteen who are now engaged in "industrial" occupations and who have not completed elementary school or its equivalent.⁶⁰

Thus, the towns may furnish such a child with part-time continuation classes or with schools meeting for at least 144 hours annually.⁶¹

If the town does offer such classes, then the state will reimburse them for 50% of the cost.⁶²

⁵⁸ 26 M.R.S.A. Section 1001 (Supp. 1975).

⁵⁹ 26 M.R.S.A. Section 1004(3) (Supp. 1975).

⁶⁰ 20 M.R.S.A. Section 2358 (Supp. 1975).

⁶¹ Id. Part-time continuation classes are those which are conducted during the hours of employment.

⁶² 20 M.R.S.A. Section 2359 (Supp. 1975). However, such reimbursement occurs nearly a year and a half later.

c. Adult Education

A child who is out of school may also be eligible to attend adult education classes. The administrative unit may provide persons who are at least sixteen years of age with evening schools, day schools, classes and other educational activity.⁶³

d. Technical and Vocational Schools

Out-of-school youth may also attend part-time and evening classes at the regional technical and vocational schools.⁶⁴ A child may attend these schools provided he is qualified to profit from the school and the school is able to accommodate him.⁶⁵ The child may receive financial assistance of \$250 annually if he has the qualifications and ability but needs financial assistance.⁶⁶

⁶³ 20 M.R.S.A. Section 858 (Supp. 1975).

⁶⁴ 20 M.R.S.A. Section 2356-B(2) (Supp. 1975). The state will reimburse the unit for 90% of the cost of this program, although cost is limited to salary, janitorial services, utility services, textbooks, reference books and consumable supplies.

⁶⁵ 20 M.R.S.A. Section 2356-F (Supp. 1975).

⁶⁶ 20 M.R.S.A. Section 2357 (Supp. 1975).

e. Positive Action Committees

The positive action committees are also required to develop a plan to deal with dropouts and potential dropouts.⁶⁷ Obviously, this plan could provide a child with additional educational opportunities.

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These committees are more thoroughly discussed infra at note 17 and accompanying text.

APPENDIX V

Maine's Current Regulatory Provisions
Relating To The Right To Education*

* The descriptive review in this appendix is excerpted from "Regulations of Maine's Juvenile Justice System" prepared for the Commission to Revise Statutes Relating to Juveniles" by its staff in July, 1976.

Because of its very nature, an educational system provides an important method for preventing juveniles from becoming offenders.¹ Thus, the Department of Educational and Cultural Services seeks to provide each person with a high quality education which will allow him to become a self-reliant, productive and satisfied citizen.²

Basically, this objective is accomplished by procedures which guarantee that each child has both the right to an education and the right to benefit from this education. Thus, the Department has promulgated certain regulations which seek to improve the education of children

1

For a general discussion of the statutory basis for the educational system in Maine, see Statutes of Maine's Juvenile Justice System, 1-24 (1976) (hereinafter referred to as Statutes).

2

Department of Educational and Cultural Services, Department Missions and Goals Statement, 1 (1974) (hereinafter Education Missions and Goals). Although this Statement was adopted in 1974, presumably many of the standards are still in effect.

Thus, the Department seeks to improve the education received by children within the state through activities which individualize the school experience, meet the needs of handicapped children and establish a statewide educational technology program. Id. at 1-2. The Department also seeks to require that the schools be of adequate size to provide equitable educational opportunities and provide for the construction and remodeling of schools. Id.

within the State through a comprehensive program of planning and leadership.³ These regulations must be carefully examined to determine both whether the purposes of the statutes are furthered and whether services are available for the education of children.

A. Right to an Education

Certainly, the first priority is to guarantee that all children have reasonable access to a free and available educational program.⁴ Although the regulations support this priority by seeking to improve the breadth and quality of education for all Maine youths,⁵ few regulations specifically discuss this aspect. These regulations may deal with the general right of a child to attend school or provide for

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Id. at 1. However, many of the programs do not have regulations which might specify standards or procedures for enacting such regulations. See, Note from Mr. Charles Sharpe to Ann Brauer, June, 1976, stating that a comprehensive system of regulations does not exist. With the assistance of the Children and Youth Services Planning Project, Commission staff located certain regulations, state plans and departmental statements which relate to the provision of education. Although we make no claim to have covered all of the regulations currently in force, we do believe that this report provides a basic overview of the standards and procedures of the Department of Education pertaining to the prevention of juvenile offenses.

4

Statutes, 5 (1976).

5

Education Missions and Goals, supra. note 2, at 1.

schools which the child may attend.⁶

1. Right to Attend School

Only one regulation specifically provides children with the right to attend school. Under this regulation, the cost of educating children who are wards of the state is the responsibility of the local school administrative district.⁷ Thus, the administrative unit is specifically required to pay for educating state wards in both private homes and boarding schools.⁸

2. Provision of Schools

Although the child in a secondary school does not have as strong a right to attend school, he does have a broader range of schools available to him.⁹ These include both private schools and

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Regulations which provide for the establishment of school districts, the construction of schools, the qualifications of teachers, and other similar activities which are necessary for the provision of education but which do not directly relate to the child are beyond the scope of this report. No regulations specifically relating to the need for free education were found.

For a discussion of the statutory basis, see Statutes, 4-16 (1976).

7

Department of Educational and Cultural Services, Administrative Letter No. 37, 1 (Oct. 6, 1975). (Hereinafter Ed. Adm. Letter). See, Statutes, 9 (1976).

8

Ed. Adm. Letter No. 37, 1 (Oct. 6, 1975).

9

See, Statutes, 10-11 (1976).

public vocational education schools.

a. Private Schools

Most of the regulations which deal with private schools merely allow the Department to maintain a liaison with these schools. Thus, the Department meets with representatives of those schools at least twice a year.¹⁰ The Department also evaluates all schools to determine if these schools meet the basic requirements for approval.¹¹

Other regulations also allow students in nonprofit private schools to participate in programs offered by the Department, including vocational education¹² and vision or hearing screening.¹³

b. Vocational Schools

Perhaps the most significant alternative for the child is a vocational school which

¹⁰ Department of Educational and Cultural Services, Program Budget Plan, Program Approval-Independent Schools, 1 (1976-77) (hereinafter Ed. Budget Plan).

¹¹ Ed. Budget Plan, Program Approval - Basic School Approval, 1-3 (1976-77). Before a private school may be approved, public schools in the area must be notified. Id. at 1.

¹² See, Department of Educational and Cultural Services, The Maine State Plan for Vocational Education, Part 1, Section 4.0 (1976).

¹³ Department of Human Services, Hearing and Vision Screening of School Age Children in Maine (1975).

seeks to provide specialized training in technical or vocational programs.¹⁴ These programs not only offer alternatives to children who are still in school, but also seek to reach those who have left school.¹⁵ Vocational programs are considered elsewhere in this report.¹⁶

B. Right to Benefit

The child must also receive an education which is suited to his physical, mental and emotional facilities.¹⁷ Thus, when it is determined that the child cannot benefit from the program in which he is enrolled, a viable alternative must exist.

1. All Children

Even children who are otherwise "normal" may have certain problems which may impede their education. These may include physical or mental problems or a lack of the skills necessary for effective participation in the educational program.¹⁸

14 See, Statutes, 13-14 and 40-42 (1976).

15 Id.

16 See discussion in Appendix VI at pages 5 et seq.

17 See, Statutes, 17-24 (1976).

18 See, Statutes, 17-20 (1976).

a. Health

Thus, the Department has established procedures to protect the health of the child and to guarantee that he has no unidentified physical problems. Guidelines have been established to assist school nurses in the performance of their duties.¹⁹

Furthermore, schools must screen the vision of children in the lower elementary grades and, where feasible, must screen children in other grades.²⁰ This screening seeks to identify children who may have eye problems and refer them to treatment as soon as possible.²¹ However, because the screening only deals with certain skills, the regulations anticipate that some children with visual problems will not be located.²²

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Ed. Adm. Letter No. 50, 1 (Nov. 6, 1975). Unfortunately, we were unable to obtain a copy of these guidelines.

20

Department of Human Services, Hearing and Vision Screening of School Age Children in Maine, 1 (1975) (hereinafter Hearing and Vision Screening).

Screening must be done in Grades K-3 and should be done in Grades 5, 7, 9 and 11.

21

Department of Human Services, Standards for Vision Screening, 2 (1975) (hereinafter Standards for Vision Screening).

22

Id.

If the child is found to have a visual problem then his parents must be notified.²³ Unless the child is already receiving treatment for this problem, the school must follow the child until he has a definite appointment to receive further diagnosis or care.²⁴

Similar procedures exist for screening the hearing of school children. Thus, children must be screened by the school to determine if they need remedial care.²⁵ Provisions are made to provide a series of screening tests to children who do not pass the initial screening.²⁶

If the test shows that the child has a severe hearing loss, then either the child or his parent must be notified in writing of the need for further evaluation.²⁷ But if

²³ Hearing and Vision Screening, 10 (1975).

²⁴ Id. at 13. Of course, if further testing indicates that the child does not have a visual problem, then he need not receive further care.

²⁵ Department of Human Services, Standards for Hearing Screening, 1 (1975) (hereinafter Standards for Hearing Screening).

See note 20 for a discussion of the grades which must be screened.

²⁶ Id. at 3-4.

²⁷ Id. at 4.

the hearing loss is less severe, an annual test is performed to determine whether the child needs further evaluation.²⁸ Whenever further evaluation is required, the school must guarantee that the child will receive care.²⁹

b. Nutrition

Schools are also authorized to provide students with breakfasts, lunches and milk.³⁰ Children whose families have an income which falls under certain designated amounts are eligible to receive these meals either for free or for reduced cost.³¹

However, in order for the child to actually receive such meals, his parents must complete a written application form.³² Once the child has been determined eligible, the

²⁸ Id. at 4. The parent or child must still be notified that a hearing loss has been detected. Id.

²⁹ Hearing and Vision Screening, supra. at 6.

³⁰ See, Ed. Adm. Letter No. 43 (July 26, 1974). However, most of these programs are optional. Thus, the only requirement is that students in elementary school be provided with a lunch. See, Statutes, 19 (1976).

³¹ Ed. Adm. Letter No. 51, 1 (July 23, 1973).

³² Id. at 3. No provision is made for the children of parents who cannot read English.

school must protect the anonymity of the child.³³

c. Guidance

Currently guidance counselors are the only persons specifically employed to deal with the mental or emotional problems of the student.³⁴ This includes counseling and testing as well as school psychological and social services and career education.³⁵ The Department also provides training to teachers and other personnel which is designed to increase their awareness of the students' feelings, thoughts and behavior.³⁶

d. Skills

Other programs seek to guarantee that the child will have the skills which are necessary in order to benefit from his education.

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Id. at 4.

34

See, Statutes, 18-19 (1976).

35

Ed. Budget Plan, Guidance, 5 (1976-77).

36

Id. at 1. Another program seeks to integrate drug education with human development in order to give teachers the necessary skills to approach human behavioral problems. Ed. Budget Plan, Human Development and Guidance Unit - Human Dev./Drug Ed. Section (1976-77).

Thus, the Right to Read program seeks to guarantee that children will read at their fullest capabilities.³⁷ Another program seeks to provide curricular and organization techniques which are sensitive to the needs of bilingual children in language development.³⁸

2. Exceptional Children

A more difficult task involves providing exceptional children with an "equal educational opportunity".³⁹ Thus, such children require special educational services to allow them to become as self-sufficient as possible.⁴⁰

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Ed. Budget Plan, Right to Read, 1 (1976-77). This program focuses on training both teachers and administrators in an effort to ensure that 99 percent of all children will read at their capacity. Id. at 2-3.

38

Ed. Budget Plan, Follow Through, 1 (1976-77). See, Statutes, 19-20 (1976).

39

20 M.R.S.A. Section 3121 (Supp. 1975). See, Statutes, 20-24 (1976).

40

Department of Educational and Cultural Services, Special Education Administrative Handbook, 1 (1974) (hereinafter Special Education Handbook). Currently most of the regulations pertaining to special education appear in this Handbook. However, recently, the Maine legislature enacted a new special education law which describes improved administrative procedures for special education programs, encompasses former laws pertaining to the Governor Baxter School for the Deaf and to children in state institutions for the mentally ill or mentally handicapped, and defines handicapped conditions in behavioral (as opposed to clinical) terms. 20 M.R.S.A. Sections 3130 et seq. (Supp. 1976). New regulations for this legislation will be promulgated. Letter from John Kierstead to All Concerned Persons, May 28, 1976.

However, before these services may be provided it is necessary to identify those children who require assistance and to determine an effective program for these children. Finally, the program of services must be actually provided to the child.

a. Identification

Basically, children eligible for these services are those exceptional children who deviate from the average in physical, mental or emotional characteristics to the extent that they require special educational facilities.⁴¹ These children may be mentally,⁴² emotionally⁴³ or physically⁴⁴ handicapped.

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Special Education Handbook, 3 (1975). Frequently, these regulations do not provide specific standards or procedures. However, because these regulations may assist us in determining the programs available, we will discuss them as thoroughly as possible.

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Id. Mentally handicapped children are defined as those who demonstrate subaverage intellectual functioning which may impair learning adaptive behavior and social adjustment. Id.

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Id. at 4. Emotionally handicapped children are those who exhibit at least one of the following characteristics to a marked extent over a period of time:

- 1) An inability to learn which cannot be explained by intellectual, sensory or health factors;
- 2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- 3) Inappropriate types of behavior or feelings under normal conditions;
- 4) A general, pervasive mood of unhappiness or depression; and
- 5) A tendency to develop physical symptoms, or fears associated with personal or school problems. Id.

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Id. at 5.

They may have impaired hearing, vision, speech or language or may be learning disabled.⁴⁵ These children may also have multiple handicaps.⁴⁶

However, gifted or talented children may not receive services under this program.⁴⁷

In order for these services to be provided, the administrative unit must establish a procedure for studying the total school population in order to identify those children who may require special education.⁴⁸

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Id. at 4-5. Learning disabled students exhibit a discrepancy between expected and actual achievements in one or more of the basic psychological processes involved in understanding or using the spoken or written language and which is not primarily the result of sensory, motor, intellectual or emotional handicaps. Id. at 56.

46

Id. at 5. Multiply handicapped children are those who have two or more disabling conditions which cause serious developmental, educational or behavior problems and who usually require programs specifically tailored to meet their needs. Id.

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Ed. Adm. Letter No. 77, 1 (March 29, 1976). Although there is a widespread belief that such students can take care of themselves, this is not true. Nationally, a high percentage of school drop-outs have above-average intelligence. Id.

See also, Ed. Adm. Letter No. 41, 1 (Oct. 3, 1975) which advises local education agencies that federal money is available for exemplary projects.

48

Special Education Handbook, 7 (1975). The federal law places priority on providing services to handicapped children who are not receiving any education. Ed. Adm. Letter No. 2 (Jan. 20, 1975).

Moreover, a Pupil Evaluation Team (PET) must be established within each unit.⁴⁹

This PET will evaluate all children referred to it to determine whether special services are required.⁵⁰

If the PET determines that special services are necessary, it will recommend to the superintendent a plan for providing these services.⁵¹ When the PET and the superintendent reach an agreement about the need for such services, the administrative unit must provide this program.⁵²

Children who are referred to the PET also receive certain procedural rights.

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Special Education Handbook, 8 (1975). Each PET includes administrative, instructional and pupil personnel staff. Id. at 8.

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Id. Presumably children who have been identified by the administrative unit will be referred to the PET. Id. at 7. The State also seeks to assist educators in developing the ability to recognize learning patterns which may indicate actual or potential problems for a child. Ed. Adm. Letter No. 48, 1 (Oct. 30, 1975).

Although usually a child who is on home instruction will be evaluated by the PET, such study is not required if the home instruction is caused by medical reasons which do not last more than six months. Special Education Handbook, 8 (1975).

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Id.

52

Id. at 9. There is no standard established to guide the superintendent in deciding whether these services must be provided.

Thus, care is taken to preserve the confidentiality of personally identifiable data.⁵³

Moreover, the administrative unit must allow parents or guardians of a child the opportunity to appeal any decisions of the school regarding denial of placement of the child.⁵⁴ At this hearing, which is conducted by the local school committee,⁵⁵ the parents or guardian shall be guaranteed certain due process rights.⁵⁶

Finally, children who are receiving special services must have their needs evaluated at least once a year by the PET.⁵⁷ This study will consider all information which may be relevant to the continued placement of the child in the program.⁵⁸

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Ed. Adm. Letter No. 66, 1 (Feb. 13, 1976).

54

Special Education Handbook, 15 (1975).

55

Id. at 16. The school board may instead decide to appoint a hearing official. This official must be appointed with the mutual agreement of the school board and the parent or guardian. Id.

56

Id. at 15-17. These include the right to be represented by an attorney, the right to present evidence, and the right to have the decision based on the evidence submitted at the hearing. The parents or guardian must be notified of the decision in writing. However, any appeal of this decision is at the discretion of the State Board of Education. Id.

57

Id. at 9.

58

Id.

b. Services

Although each child will receive services designed to meet his individual needs, certain general standards apply for all of these services. Special education includes the instruction, diagnosis, evaluation, transportation and provision of corrective and supportive services as defined by the Commissioner.⁵⁹

Usually, the child must receive a minimum of five hours of instruction each day.⁶⁰ Moreover, programs for children age sixteen and over should include a career education program and a vocational education program if their educational and vocational potential makes this desirable.⁶¹

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Id. at 3. Corrective and supportive services are those which are determined to be necessary in order to enable the child to benefit from the education. Id. at 6. These do not include personal medical items such as wheelchairs or hearing aids. Id.

It may be assumed that without these services, such children will be likely to truant or dropout of school since they are less able to benefit from the regular school program.

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Special Education Handbook, 11 (1975).

61

Id.

However, many of the requirements for these programs were specifically designed to meet the characteristics of a particular client group. Thus, it is necessary to examine the services which are required to be provided to certain classifications of children.⁶²

(i) Mentally Handicapped

For example, programs for the educable mentally handicapped should provide for the development of basic skills and career preparation including work-study programs with on-the-job experiences.⁶³

Similarly, programs for the trainable mentally handicapped individuals seek to develop that person's full potential for independent action.⁶⁴ Programs for the

⁶²

Other programs seek to identify and treat students who have impaired hearing, vision and speech and language, or who are physically handicapped. Id. at 43-51, 52-55, 62-63, and 64-70. However, these programs are only indirectly related to the target group.

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Id. at 21. Educable mentally handicapped individuals develop at between one-half and three-quarters the normal rate. Id. at 18. To the maximum extent possible, such persons should be educated in a regular classroom. Id. at 20-21.

⁶⁴

Id. at 26. Trainable mentally handicapped individuals develop at between one-quarter and one-half the normal rate. Id. at 23.

profoundly mentally handicapped must emphasize the developmental needs of each student.⁶⁵

(ii) Emotionally Handicapped

Perhaps the most important program for the current target group deals with the emotionally handicapped.⁶⁶ This program first seeks to diagnose such handicaps by requiring that the teacher or other source refer students who exhibit "[a]ny inappropriate behavior" to the PET.⁶⁷

After such a student has been identified, the PET will conduct a systematic assessment of the student's problems including psychological, sociological and

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Id. at 32. Profoundly mentally handicapped individuals develop at no more than one-quarter the normal rate. Id. at 29.

66

See note 5 for a definition of this group. Certainly many students who truant or dropout are emotionally handicapped. Moreover, this handicap may also cause the student to interfere with the education of other students. Id. at 35.

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Id. at 36. See Ed. Adm. Letter No. 48 (Oct. 30, 1975) for a discussion of one program which seeks to train teachers to recognize these problems.

psychiatric evaluations.⁶⁸ The PET may recommend specific educational services for the student, which will usually allow the student to remain in the regular classroom.⁶⁹

(iii) Learning Disabled

Programs are also available for the learning disabled.⁷⁰ These programs seek to diagnose students with such disabilities and provide them with an individual treatment plan which will ultimately allow them to return to the regular school program.⁷¹

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Id. at 37. The PET should also evaluate the educational experiences of the student including consideration of the teacher's observations. Id. at 36-37.

Compare this with the more generalized procedures for other exceptional children discussed at text after note 40.

69

Id. at 37. For example, if the disorder is temporary, the student may receive the services of an itinerant specialist who concentrates on assisting the teacher handle the problem. Id. at 38.

For other students a resource room may be provided which they will use for a portion of the day while remaining identified with the regular classroom. Id. at 38-39.

Self-contained special programs are also available to help the students resolve their problems so that they may return to the regular classroom. Id. at 39.

Other programs include supplementary tutoring, hospital instruction, day treatment programs, residential programs and home instruction. Id. at 39-41. These programs also seek to return the child to his regular classroom. Id.

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Id. at 56.

71

Id. at 56-61.

c. Provision of Services

After the child has been evaluated and a program of services has been formulated, it is necessary to determine both the facilities which will provide these services and the persons or agencies which will be responsible for paying for these services. Yet although these are two distinct considerations, each is dependent on the other since certain agencies will only provide services in certain facilities. It is necessary to also discuss methods available to provide related services.

(i) Financial Arrangements

Usually this program will be provided in the local school district.⁷²

Whenever possible, the child must be maintained in a regular school program and must be provided any necessary supplementary instruction.⁷³

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Id. at 10. By statute, the local administrative unit is to be reimbursed for providing this education. Statutes, 20-24 (1976). However, in order for the unit to be reimbursed, the Division of Special Education must approve all tuition placements. Ed. Adm. Letter No. 49, 1 (Nov. 3, 1975).

However, when the Department lacks funds, these expenditures are prorated. Ed. Adm. Letter No. 28, 1 (Aug. 15, 1975).

73

Special Education Handbook, 9 (1975).

However, if it is considered desirable, the child may be placed in a special class.⁷⁴ But even when this occurs, efforts are made to allow the child to associate with his peers. Thus in most cases, the special class will be held in a regular public school which serves children of approximately the same chronological age as the exceptional child.⁷⁵ Moreover, the curriculum of the special class must allow the child to participate in the total school program whenever possible.⁷⁶

When a program in the public school is not feasible, the child may be placed in either a regional program or a private program.⁷⁷ However, such placements

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Id. at 10.

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Id.

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Id. at 10-11.

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Id. at 10. Such placements will be reimbursed only if the administrative unit enters into a contract with the private school and the contract is approved by the Department of Education. Ed. Adm. Letter No. 16 (May 1, 1975). See also, Ed. Adm. Letter No. 76 (March 19, 1976) which requests that all possible efforts be taken to place the child in a local facility.

will be approved by the Department only if no local placement offers a suitable program.⁷⁸

Although the administrative unit may place the child in a summer program, the Department will not reimburse the unit for the cost of the program.⁷⁹

The Bureau of Instruction also provides programs for handicapped children in cooperation with other state agencies. Thus, the Bureau will coordinate its activities with the Division of Vocational Rehabilitation.⁸⁰ Similarly, the Bureau will refer students with severe visual impairment to the Division of Eye Care for educational and rehabilitative services.⁸¹

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Thus, there must be a careful assessment of the public resources available regionally and locally. Ed. Adm. Letter No. 23, 1 (July 2, 1975). Moreover, the private school must have the specific approval of the Department. Id.

Placement in private schools may be approved for no more than forty weeks. Ed. Adm. Letter No. 44 (Oct. 22, 1975).

79

Ed. Adm. Letter No. 17 (June 6, 1975).

80

Special Education Handbook, 71-74 (1975).

81

Id. at 81-83.

However, probably the most significant aspect of this cooperation evolves from an agreement between the Bureau of Instruction and the Bureaus of Mental Health and Mental Retardation.⁸² This agreement allows the Bureau of Instruction to cooperate with the Bureau of Mental Health when services outside of the public school system are provided to a child who is emotionally handicapped.⁸³

Under the terms of this agreement, the school administrative unit is responsible for providing tuition and room and board for the school year.⁸⁴ The Bureau of Mental Health has the responsibility

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Id. at 75-80. The Bureaus of Mental Health and Mental Retardation are located within the Department of Mental Health and Corrections.

83

Id. at 76-77. When the child is placed in a day treatment program, the school administrative unit assumes responsibility for the program. Id. at 76.

When the child is placed in a residential program, unless the placement results only from the lack of an appropriate program within the administrative unit, the PET must consult with the Departments of Educational and Cultural Services, Mental Health and Corrections and Human Services. Id.

84

Id. at 76-77. Tuition includes the cost of the necessary educational and corrective services. Id.

to meet the psychological needs of the child which are not directly related to an appropriate educational program.⁸⁵

The Bureau of Mental Retardation has the responsibility for usually providing the program costs of children residing in the institution.⁸⁶

(ii) Related Services

Certainly the most significant related service for which the local administrative unit will be reimbursed involves the provision of transportation to exceptional children. Thus, the unit must provide an alternate means of transportation to those children who cannot be conveyed on the regular bus system.⁸⁷

When a child is placed in a residential facility, the administrative unit

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Id. at 78. These include the provision of psycho-therapy and other intensive therapies to the child and counseling to the parents. Id. The Bureau also provides continued residential programs to children during the summer months. Id.

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Id. at 79. However, the administrative unit of the child's legal residence must pay the cost of community education programs for institutionalized children who attend such programs. Id. at 79.

87

Id. at 13-14. This includes the cost of a transportation aide and may also include the cost of modifying equipment to meet the needs of the student. Id. at 14.

is responsible for the costs of transporting the child at the beginning and end of the school year and for no more than five regularly scheduled holidays.⁸⁸

However, the administrative unit will not be reimbursed for many services related to special education. Thus, reimbursement is allowed only for costs directly related to such education.⁸⁹ These include remedial reading except when it is provided by credentialed personnel, guidance services other than testing, stipends for employees of the administrative unit who serve on a PET and thirty-five percent of the salaries except for self-contained programs.⁹⁰ Salaries of non-certified special education personnel are also not reimbursed.⁹¹

⁸⁸ Ed. Adm. Letter No. 15 (April 15, 1975).

⁸⁹ Special Education Handbook, 15 (1975).

⁹⁰ Ed. Adm. Letter No. 28, 1 (Aug. 15, 1975).

⁹¹ Id. See Ed. Adm. Letter No. 40 (July 17, 1974) for an illustration of certification requirements.

Many programs are also available to provide for the training of teachers and other personnel in an effort to improve the services offered to such children. See, Ed. Budget Plan (1976-77).

APPENDIX VI

Maine's Current Regulatory Provisions
Relating to Truancy, Exclusion and
Expulsion*

*The descriptive review in this Appendix is excerpted from "Regulations of Maine's Juvenile Justice System" prepared for the Commission to Revise Statutes Relating to Juveniles by its staff in July, 1976.

Non-Criminal Behavior

Although the State of Maine has assumed jurisdiction over juveniles who commit certain acts of non-criminal behavior,¹ few regulations exist which directly relate to the prevention of this behavior outside the court system. Most existing regulations pertain to children who truant or drop-out.

Basically, these regulations attempt to prevent a child from leaving school either voluntarily or because of expulsion or suspension. Further, special provisions of Maine's vocational education plan are specifically designed to meet these problems.

A. Voluntary Absence

Few regulations deal with programs explicitly designed to prevent children from voluntarily absenting from school. But there are implicit statements to the effect that children should remain in school. For example, the Department of Education and its administrative units cooperated with the Governor's Statewide Dropout Project begun in 1973.² Also, each administrative unit that operates a high school in Maine is

¹ Statutes of Maine's Juvenile Justice System prepared for the Commission to Revise Statutes Relating to Juveniles by its staff in March, 1976 at 25-50 (hereinafter Statutes).

² Ed. Adm. Letter No. 72 (Oct. 18, 1973).

required to establish a positive action committee to determine the reasons children leave school.³

B. Involuntary Absence

Although a child may be involuntarily absent from school for any of several reasons - such as illness - only involuntary absence because of suspension or expulsion are considered here.

Basically, each administrative unit determines and institutes a specific policy regarding school suspension and expulsion.⁴ However, the Department has established guidelines to assist the units in forming their policy.⁵

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Ed. Adm. Letter No. 82 (April 9, 1976). Recent legislation has moved the date for the formation of these committees back to October 1, 1976 and has placed the date for filing a plan on January 1, 1978. 20 M.R.S.A. Sections 931-33 (1976). Moreover, the responsibility for creating the committee now resides in the school superintendent of each administrative district. 20 M.R.S.A. Section 933 (1976). Finally, the number of students and recent dropouts on the committee has been reduced to four. Id. Compare this with the previous statute discussed in Statutes, 30-32 (1976).

4

Ed. Adm. Letter No. 22, 1 (June 18, 1975). Although the Department recommends that each unit promulgate regulations in order to guarantee fairness to the individual, such regulations are not required. Department of Educational and Cultural Services, Student Suspension and Expulsion, 7 (June 1975) (hereinafter Student Suspension and Expulsion). These regulations may include the requirements that definite evidence that the student's behavior interferes with the school system be established, that the administrator secure advice that it is in the best interest of the student to remove him, and that the student be informed of vocational or other educational opportunities which may assist him gain readmission. Id. at 6-7.

5

Ed. Adm. Letter No. 22, 1 (June 18, 1975).

Thus a student can be expelled for being obstinately disobedient and disorderly if such action was necessary to preserve the peace and usefulness of the school.⁶ Similarly, a student may be suspended for a definite period of time when such action is necessary to maintain order in the school.⁷

However, before a child can be suspended or expelled he must be granted certain procedural rights.⁸ These rights depend on the length of suspension or expulsion.

Thus, before a child may be suspended for ten days or less, he must usually be informed of the charge against him and the basis for this

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Student Suspension and Expulsion, 1 (June 1975). Under its statutes, Maine provided the school with the ability only to expel students. See, ABA, Statutes, 38 (1976). However, the Attorney General's Office interpreted the statutes to allow the school administrator to suspend the child and the board of education to expel him. Student Suspension and Expulsion, 1-2 (June 1975).

A recent statutory enactment has resolved this dilemma by providing that the school committee may authorize the principal to suspend a child for up to ten days for infractions of school rules. 20 M.R.S.A. Section 473(5) (1976).

7

Student Suspension and Expulsion, 2 (June 1975).

Actions justifying suspension included continued and willful disobedience, habitual use of profanity or obscene language or injuring individuals or school property. *Id.* Students could be suspended for acts done off the school property if such suspension was reasonably necessary for the physical or emotional safety and well being, presumably of the individual, or for the safety of other members of the school community. *Id.* But see note 101.

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Id. See also Goss v. Lopez, 419 U.S. 565, (1975).

charge.⁹ If the student denies the charge, he must be given an opportunity to tell his side of the story.¹⁰ However, if the student poses a continuing danger to persons or property or presents an on-going threat of disrupting the academic process, he may be immediately suspended and subsequently be afforded the above procedural rights.¹¹

Once a student has been suspended, both the superintendent of schools and the school board must be notified.¹² Either of these may reinstate the student after suspension.¹³

When a student is expelled or suspended for more than ten days, he is afforded more substantial procedural rights.¹⁴ Thus, he must be granted a hearing

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Student Suspension and Expulsion, 2 (June 1975). The Department has interpreted this to mean that the administrator may informally confront the student after the alleged violation, tell the student of the charge and hear the student's explanation. Id. at 3.

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Id. at 3. The student does not have the right to secure an attorney, confront and cross-examine witnesses or present witnesses on his own behalf. Id. at 3. However, if the student is suspended for more than ten days, he may arguably receive these rights. Id. at 4.

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Id. at 3.

12

Id.

13

Id. No standards for this readmission are established however.

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Id. at 5. Compare this discussion of the rights of students suspended for more than ten days with the previous discussion at note 9 and accompanying text of the rights of students suspended for ten days or less.

held by the Board of Education within a reasonable time after the suspension.¹⁵ At the hearing the student may be represented by a lawyer.¹⁶ A record of the proceeding should be kept and be available to the student.¹⁷

If the Board finds that the student did not commit the alleged act, then the student may request that all written entries be expunged from his school records.¹⁸ Provisions are also made to allow the student to appeal a decision to suspend or expel him.¹⁹

C. Vocational Education

An important aspect of a truancy or drop-out prevention program is the provision of vocational education. Generally, such a program can not only assist children in receiving an education from which they can benefit, but it can also provide alternatives to children who leave school.²⁰ Furthermore, the program can be

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Id. at 5. Similarly, the hearing must be held with all reasonable speed. Id.

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Id. Depending on the circumstances of the case, the student may also have the right to be presented with the names of witnesses and copies of their statements, the right to cross-examine witnesses, the right to testify and the right to produce witnesses on his own behalf. Id.

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Id.

18

Id. No provision is made for those cases in which the Board finds that the student did commit the act but that the act does not warrant expulsion.

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Id. at 6.

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See, Statutes, 13-14 and 40-42 (1976) for a discussion of these programs.

specifically designed to meet the needs of children who leave school.²¹

Currently there are several different programs of vocational education available in Maine through the Bureau of Vocational Education.²² Because of the possible importance of these programs, it is necessary to carefully examine the clientele reached, the programs offered, and the method of provision to determine if children currently have a viable alternative to the traditional school structure.

1. Identification

The State of Maine currently provides services to most persons who need vocational education, including persons who are in high school, persons who have completed or left high school, and

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These school dropouts are defined as those students who leave elementary or secondary school for any reason except death before graduation from secondary school or completion of a program of studies and without transferrring to another school. Department of Educational and Cultural Services, The Maine State Plan for Vocational Education, Part 1, Section 1.10D (1976) (hereinafter Plan for Vocational Education).

22

This Bureau must not be confused with the Division of Vocational Rehabilitation located within the Department of Human Services. See discussion at Statutes, 133 (1976).

The vocational education programs are administered by the State Board of Education. See Plan for Vocational Education, Section 1.11 (1976).

disadvantaged and handicapped persons.²³

As a first step, disadvantaged and handicapped persons must be identified.²⁴ Thus, local educational agencies have the responsibility to identify persons who are disadvantaged and require specially designed educational programs.²⁵

Persons are considered disadvantaged when poverty, neglect, delinquency or cultural or academic deficiencies prevent them from succeeding in regular vocational programs.²⁶

Similarly, the State Board of Education will identify persons who are mentally, physically or emotionally handicapped and therefore require special programs of vocational education.²⁷

23

Plan for Vocational Education, Section 3.1 (1976). This is a state plan offered so that the state may qualify for federal funds. Therefore, the plan includes more specificity than state regulations in order to meet federal requirements. The State seeks to provide as diversified a program of vocational education as the community and State can support. Plan for Vocational Education, Part 2, Section 4.0 (1976).

24

Special programs of vocational education may be available to such persons. See text after note 31.

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Plan for Vocational Education, Part 1, Section 3.12 (1976). Presumably, the requirement that the local educational agency makes this identification might prohibit other local agencies, including the law enforcement agencies or the courts, from referring a child to such services.

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Id. Persons who suffer from physical or mental handicaps are excluded from this category unless they also suffer from the handicaps of disadvantaged persons. Id.

The local education agency will determine the degree of deprivation which is necessary to allow a person to qualify for this program. Id.

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Id. at Section 3.13 (1976).

2. Services

The programs and services which may be offered vary according to the categories of persons receiving the service. These programs may either serve the general vocational needs of all persons or may specifically attempt to meet the needs of certain classifications of persons. Obviously, it is necessary to carefully consider all of the programs available to determine if the needs of persons served are met.

a. Secondary School Programs

Programs may be offered to children in high school through the public high schools, area vocational schools, state institutions, and certain academies and nonpublic schools.²⁸ These programs provide information, guidance and training to allow students to enter employment upon completion of high school.²⁹

b. Postsecondary School Programs

Postsecondary programs, which may only be established by regional technical vocational centers, are available to persons who

²⁸ Id. at Section 3.15-1 (1976). The State guidance consultant must provide all schools with information on career opportunities and requirements. Id. at Section 1.34-1 (1976).

The local guidance counselor must provide information to interested youths and adults and must provide placement services to graduates, out-of-school youth and adults. Id. at Section 1.34-2 (1976). He must also counsel individual students and assist them in appraising their own interests and talents and making sound decisions regarding preparation for an occupation. Id.

²⁹ Id. at Section 3.15-1 (1976).

either left or completed high school.³⁰

Such programs seek to prepare the students as fully as possible to enter employment in the fields studied.³¹

c. Programs for the Disadvantaged

Programs are also offered specifically to provide training for disadvantaged persons in occupations in which they can succeed.³²

Although these programs may be offered by public schools, area vocational schools, and state institutions, frequently this program will be "entirely separate" from the regular school program.³³

Similarly programs for handicapped persons seek to train these persons in employment

³⁰ Id. at Section 3.15-2 (1976). These programs must also have approved objectives and curriculum and must specify procedures for admitting students. Id.

Minimum funding requirements also exist. Therefore, the state must spend the greater amount of 15 percent of the total allotment from the federal government or 25 percent of that portion of the state's allotment which is in excess of the base allotment shall be used only for these programs. Id. at Section 3.11(1) (1976).

³¹ Id. at Section 3.15-2 (1976).

³² Id. at Section 3.15-4 (1976).

³³ Id. at Section 3.15-4 (1976). Compare this with provisions which seek to maintain a child in the regular classroom wherever possible. See Appendix V at note 73 and accompanying text.

opportunities where they can succeed, through programs which may also be "entirely separate" from the regular school program.³⁴

d. Exemplary Programs

Exemplary and innovative programs may be developed to stimulate new methods for creating a bridge between school and employment for young persons.³⁵ These programs, which should place special emphasis on youth who have academic, socioeconomic, or other handicaps, may provide intensive occupational guidance or counseling, broaden or improve vocational education programs, or allow young workers to obtain greater educational experience while remaining employed.³⁶

e. Residential Vocational Schools

Funds are also available for the construction and operation of residential vocational schools to meet the vocational and/or

³⁴ Id. at Section 3.15-5 (1976). Not less than 10 percent of the state's total allotment of federal funds must be used to provide these programs. Id. at Section 3.11(3) (1976).

³⁵ Id. at Section 6.0 (1976).

³⁶ Id.

technical needs of youths between the ages of fourteen and twenty-one.³⁷ These schools must provide programs geared to the training needs and employment opportunities in the area and elsewhere.³⁸ Rural and isolated youths for whom commuting is unsatisfactory must receive primary consideration for enrollment in these schools.³⁹

Thus, eligible youth can benefit from a program of full-time study on a residential basis at no cost.⁴⁰ However, juveniles may not be assigned to the school as a result

³⁷ Id. at Sections 7.0 and 7.11-1 (1976). The State Board of Education, however, is not required to approve funds for these programs, even if the programs meet the specified requirements. Id. at Section 7.11-1 (1976).

³⁸ Id. at Section 7.11-1(1) (1976). Thus the size of the facility will be based on the number of persons to be benefitted by it in the geographic area served. Id. at Section 7.11-1(3) (1976).

³⁹ Id. at Section 7.11-1(3) (1976). However, urban and suburban youth may attend to take special course offerings which would otherwise be unavailable. Id.

But, in deciding to approve a project, the State Board must also give special consideration to the needs of large urban areas which have a substantial number of youths who have dropped out of school or are unemployed. Id. at Section 7.12-2 (1976).

Priority will be given to those areas with high concentrations of unemployed youth or school dropouts. Id. at Section 7.13 (1976).

⁴⁰ Id. at Section 7.2 (1976). Tuition, room, board and other necessities must be provided without fee to the student. Id.

of their being legally adjudicated a delinquent.⁴¹

f. Consumer and Homemaking Education

In addition, funds are provided for locally operated programs in consumer and homemaking education to help individuals and their families improve their home environments and the quality of their personal and family life.⁴²

g. Cooperative Vocational Education

Programs in cooperative vocational education provide students with both a meaningful work experience and a more structured education.⁴³ Such programs shall place the student learner under the direct supervision of a designated on-the-job trainer with other

⁴¹ Id. at Section 7.21 (1976). See, Statutes, 95-96 (1976) for a discussion of adjudication. But prior to such adjudication, the judge may dismiss the case and place the juvenile on probation. Statutes, 91-92 (1976). Obviously, a condition of probation could be attendance at such a residential school.

⁴² Id. at Sections 8.0, 8.1, 8.11 and 8.12 (1976).

⁴³ Id. at Section 9.2 (1976).

supplementary vocational instruction.⁴⁴

h. Work Study Programs

Work-study programs are also available to qualified youth through the local educational agency or institution.⁴⁵ In order to qualify, the student must be enrolled in good standing in an approved program and must need the earnings from such employment in order to continue his vocational education.⁴⁶

During the school year, no student may be employed for more than fifteen hours per week nor may he earn more than \$45 per month or a total of \$350 per academic

⁴⁴ Id. at Section 9.2 (1976). The employment of a student-learner may not displace a worker employed in the establishment. Id. Such on-the-job training must be related to existing career opportunities. Id. at Section 9.22 (1976).

Students may only be reimbursed for unusual costs which are not reasonably required of persons engaged in the field of employment for which the training is being provided. Id. at Section 9.25(1) (1976). Students enrolled in private nonprofit schools may also participate in these programs. Id. at Section 9.26 (1976).

⁴⁵ Id. at Section 10.1-1 (1976).

⁴⁶ Id. at Section 10.22 (1976). The student must also be between the ages of fifteen and twenty-one and must be capable of maintaining his good standing while so employed. Id.

year.⁴⁷ Such programs must also include adequate guidance and counseling services.⁴⁸

3. Requirements

Once the State Board of Education has received federal funds to provide these services, it must allocate the funds to local educational agencies.⁴⁹ Such allocation is generally based on the manpower needs of the area, the job opportunities which the program offers, the vocational educational needs of the area, the relative ability of the area to pay for these services and the cost of these services.⁵⁰ However, no local educational agency which is making a reasonable tax effort may be denied funds merely because it

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Id. at Section 10.23-1 (1976). However, he may earn \$60 per month and \$500 per academic year if he attends a school which is not within reasonable commuting distance of his home. Id.

If the student is not attending classes during the summer, there is no limit on his hours of employment or amount of compensation. Id. at Section 10.23-2 (1976).

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Id. at Section 10.13 (1976). The needs are determined by the number of youths who have dropped out of school or who are unemployed. Id.

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However, payments from the federal funds may not be used to supplant state or local funds. Id. at Section 3.24 (1976). Thus, the combined fiscal effort of the state and local agency may not be less than the combined effort for the second preceding fiscal year, except in unusual circumstances. Id.

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Id. at Section 3.2-1 (1976).

is unable to pay the non-Federal share of the cost of the program.⁵¹

In determining the relative priority of local applications, the State must consider current and projected manpower needs as determined by local surveys, periodic evaluations of students and information obtained from other State agencies.⁵²

The vocational educational needs of the potential clientele are determined by both state and local information, with particular consideration given to the additional financial burdens which students requiring special education programs may place on a local agency.⁵³

In determining the relative ability of the local educational agency to provide resources, the State Board must consider the tax base of the

⁵¹ Id. at Section 3.25-2 (1976).

⁵² Id. at Section 3.26-1 (1976). See, Plan for Vocational Education, Part 2, Section 1.0 (1976) for a discussion of the manpower needs of the state.

⁵³ Plan for Vocational Education, Part 1, Section 3.26-2 (1976). The local agency must conduct a yearly evaluation of these needs as a requirement for the approval of the program. Id.

See, Plan for Vocational Education, Part 2, Section 4.0 (1976) for a discussion of the vocational educational needs of the state.

area, and whether the area has been designated an economically depressed or high unemployment area.⁵⁴

Finally, the State will consider the costs of the programs which are in excess of costs normally attributed to the cost of education within the local agency.⁵⁵ Priority will be given to the amount expended per pupil which is in excess of the State average operational expenditure.⁵⁶

In addition to these general requirements, programs which deal with selected classifications of persons must meet certain other requirements. Thus, funds for programs for disabled persons must be allocated to areas of the state which have a high concentration of youth unemployment or school dropouts or areas which are economically

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Plan for Vocational Education, Part 1 at Section 3.26-3 (1976). However, in Maine, all but two counties (Cumberland and Kennebec) have been designated economically depressed and one of these (Kennebec) has a high unemployment rate. Maine Department of Educational and Cultural Services, The Maine State Plan for Vocational Education - Part 1.

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Id. at Section 3.26-4 (1976).

56

Id. Thus normally local agencies providing the most costly services will receive priority in obtaining state funds.

depressed or isolated.⁵⁷

Similarly, priority is given to those cooperative education programs which are located in areas with high concentrations of youth unemployment, school dropouts and educationally

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Id. at Section 4.1 (1976). Areas are economically depressed when they meet either of the following criteria:

1. The current unemployment rate of the area is at least 6 percent and the average rate of unemployment has been above the national average by at least:
 - a. 50 percent for the preceding four years;
 - b. 75 percent for two of the three preceding years;
 - c. 100 percent for one of the two preceding years.
2. The median family income in the area is not more than 40 percent of the national median.
Id. at Section 1.10C (1976).

Areas that have high youth unemployment must have a rate of unemployment for persons between the ages of sixteen and nineteen of at least 12 percent and the average rate for the area must have been above the national average by at least:

- a. 50 percent for three of the four preceding years;
- b. 75 percent for two of the three preceding years;
- c. 100 percent for one of the two preceding years.
Id. at Section 1.10D (1976).

Local school administrators determine which areas have a high concentration of school dropouts by comparing the average dropout rate of the area for the last three years with the state average. Id.

However, using all of this information, it becomes apparent that almost all areas in the state meet at least one of these criteria. See Appendix IV.

disadvantaged youth.⁵⁸

Exemplary programs must help meet the needs of disadvantaged youth and help reduce unemployment of youth.⁵⁹ Moreover, the program must also include a method for evaluating the effectiveness of the program to determine if the objectives have been met.⁶⁰

⁵⁸ Id. at Section 9.12(2) (1976).

⁵⁹ Id. at Section 6.12(1) (1976). The plan must also provide adequate facilities and staff at a reasonable cost and must have the potential for becoming part of the regular vocational education program. Id.

⁶⁰ Id. at Section 6.2 (1976).

APPENDIX VII

Truancy Statutes in Jurisdictions
Other Than Maine

Truancy Statutes*

State	Definition of Truancy	Definition if Habitual Truancy	Who May Be Held Liable: Parent and/ or Child	Consequence	
				Parent Misdemeanor, Fine, Imprisonment	Child Can Be Institutionalized
Alabama	None	None	Both	M	Yes
Alaska	None	None	Both	F;I	No
Arizona	None	None	Both	M	Yes
Arkansas	None	None	Both	M	Yes
California	Absent or tardy more than 3 days in one year	Report of truancy 3 or more times	Both	M	Yes
Colorado	None	None	Both	I	Yes
Connecticut	None	None	Both	F	Yes
Delaware	None	None	Both	F;I	Yes
D.C.	None	None	Both	M	Yes
Florida	None	None	Both	M	Yes
Georgia	None	None	Both	M	Yes
Hawaii	None	None	Parent	F;I	No
Idaho	None	Repeated violations by pupil of, or failure of parents to make heed and follow the regulations concerning attendance	Both	M	Yes
Illinois	None	None	Both	M	Yes
Indiana	None	None	Both	M	Yes
Iowa	Failure to attend school regularly	None	Both	F	Yes
Kansas	Failure to enroll, or inexcusably absent 3 consecutive days or 5 or more days in any semester	None	Child	-	Yes
Kentucky	Absent for 3 days or tardy on more than 3 days (tardy is being absent for less than half a day)	Being reported as a truant more than 3 times	Both	F;I	Yes
Louisiana	None	None	Both	F;I	Yes
Maine**	-	-	-	-	-
Maryland	None	None	Both	M	Yes
Massachusetts	None	None	Both	F	Yes
Michigan	None	None	Both	M	Yes
Minnesota	None	None	Both	M	Yes
Mississippi	None	None	Child	None	Yes
Missouri	None	None	Both	M	Yes
Montana	None	None	Both	F;I	Yes
Nebraska	None	None	Both	M	Yes
Nevada	Absent without valid excuse for any part of a day	Deemed truant 3 or more times within a school year	Both	M	Yes
New Hampshire	None	None	Both	F	Yes
New Jersey	None	None	Both	F	Yes
New Mexico	None	None	Both	M	Yes
New York	None	None	Both	M	Yes
North Carolina	None	None	Parents	M	No
North Dakota	None	None	Both	M	Yes
Ohio	None	None	Both	F	Yes
Oklahoma	None	None	Both	M	Yes
Oregon	8 one-half day absences in any 4 weeks	None	Both	F;I	Yes
Pennsylvania	None	None	Both	M	Yes
Rhode Island	None	None	Both	M	Yes
South Carolina	None	None	Both	F;I	Yes
South Dakota	None	None	Both	M	Yes
Tennessee	None	None	Both	M	Yes
Texas	None	None	Both	F	Yes
Utah	None	None	Both	M	Yes
Vermont	None	None	Both	F	Yes
Virginia	None	None	Both	M	Yes
Washington	None	None	Parents	F	No
West Virginia	None	None	Both	M	Yes
Wisconsin	None	None	Both	F;I	Yes
Wyoming	None	5 or more absences in any one school year	Both	M	Yes

* Source: Children's Defense Fund, Children Out of School in America (Cambridge, 1974).

** Considered in text.

APPENDIX VIII

Due Process Requirements and the Suspension
or Exclusion of Children From School

In 1961, the United States Court of Appeals for the Fifth Circuit held in Dixon v. Alabama State Board of Education¹ that "due process requires notice and some opportunity for hearing before a student... is expelled for misconduct".² Slowly, other courts generalized the Dixon holding.³

Then in 1971, courts began to apply Dixon to suspensions of varying severity.⁴ At first, they required a prior hearing for a suspension of forty days,⁵ then for a suspension of ten days.⁶ Next courts recognized that even a suspension of a few days substantially harmed a child.⁷ One court required a formal prior hearing for a suspension of one-two days.⁸ And another observed that "a suspension

¹ 294 F.2d 150 (5th Cir., 1961); cert. denied, 368 U.S. 930.

² Id. at 158.

³ See, for example, Esteban v. Central Missouri State College, 277 F. Supp. 649 (W.D. Mo., 1967); Vought v. Van Buren Public Schools, 306 F. Supp. 1388 (S.D. Mich., 1969); Williams v. Dade County School Board, 441 F.2d 299 (5th Cir., 1971).

⁴ Williams, supra., note 3.

⁵ Id.

⁶ Black Students of North Fort Meyers Jr.-Sr. High School v. Williams, 470 F.2d 957 (5th Cir., 1972).

⁷ See, for example, Shanley v. Northeast Independent School District, 462 F.2d 960 (5th Cir., 1972).

⁸ Mills v. Board of Education, 348 F. Supp. 866 (D.D.C., 1972).

of even one hour could be quite critical to an individual student..."⁹.

In recent years, courts have concluded that a suspension of more than five days¹⁰ or ten days¹¹ must be preceded by an adversary hearing. But for shorter suspensions, full compliance with the Dixon requirements is, apparently, unnecessary.¹²

9

Shanley, supra. at note 7.

10

Vaie v. Board of Education, 354 F. Supp. 592, 603-604 (D.N.H., 1973).

11

Black Students, supra., at note 6.

12

Pervis v. LaMarque Independent School District, 466 F.2d 1054, 1058 (5th Cir., 1972).

APPENDIX IX

Jurisdictional Basis for Behavior Proscribed

Only for Children

*The material in this chart is based on unpublished data gathered in October, 1974 by Kristine McCarthy and Aidan Gough of Santa Clara University School of Law for the Institute of Judicial Administration/American Bar Association's Juvenile Justice Standards Project.

Jurisdiction	CHARACTERIZATION										BEHAVIOR EMPHASIS									
	Incompetent Child	Incorrigible Child	CIRS	FIRS	Unruly Child	Wayward Child	Other	No Title	Prohibit. against Remission with (with)	Beyond Control	Unmanageable (Uncontrollable)	Incorrigible	Runaway	Wayward	Truant	Habitually Delinquent	Children's Offense	Life, Absolute Life	Penalty to Self or others	Other
Alabama	X								X	X								X	X	
Alaska		X						X	X	X		X	X	X				X	X	
Arizona	X	X							X		X		X	X	X			X	X	
Arkansas	X											X	X	X						
California	X								X	X								X	X	
Colorado		X							X		X		X							X
Connecticut	X								X		X	X	X					X	X	
Delaware	X								X	X	X	X	X	X				X	X	
D. of C.		X								X				X	X	X				X
Florida		X							X	X	X	X	X	X	X			X	X	
Georgia	X			X					X	X	X	X	X	X	X	X		X	X	
Hawaii								X	X											X
Idaho								X					X							X
Illinois							X*		X				X							X
Indiana	X								X	X	X	X	X	X	X	X		X	X	
Iowa	X								X			X		X	X					X
Kansas						X					X	X	X	X						X
Kentucky							X	X	X			X	X	X						X
Louisiana		X					X	X	X	X	X	X	X	X	X	X		X	X	
Maine**																				
Maryland		X							X	X				X	X	X		X	X	
Massachusetts						X														X
Michigan							X				X	X	X	X	X	X		X	X	
Minnesota	X								X		X	X	X							X
Mississippi	X								X	X	X	X	X	X	X	X		X	X	
Missouri							X													X
Montana	X					X		X	X		X	X	X	X	X	X		X	X	
Nebraska		X							X		X	X	X	X	X					X
Nevada	X	X							X		X	X	X	X	X			X	X	
New Hampshire	X								X		X	X	X							X
New Jersey	X					X***	X	X	X	X	X	X	X	X	X	X	X	X	X	
New Mexico		X							X	X				X	X	X				X
New York			X						X	X	X			X	X					
North Carolina							X	X	X		X	X	X							X
North Dakota					X				X				X	X	X			X	X	
Ohio					X				X	X	X	X	X	X	X	X		X	X	
Oklahoma		X							X				X							X
Oregon							X	X		X										X
Pennsylvania	X								X						X					
Rhode Island						X					X	X	X							X
South Carolina	X								X	X	X	X	X	X	X			X	X	
South Dakota		X							X		X	X	X							X
Tennessee					X				X				X	X	X					X
Texas							X				X	X	X							X
Utah							X	X					X							X
Vermont		X				X			X	X				X	X					
Virginia							X	X	X	X	X	X	X	X	X					X
Washington							X		X	X		X	X	X	X		X	X		
West Virginia	X								X	X	X	X	X	X	X					X
Wisconsin		X				X			X		X	X	X							X
Wyoming	X								X	X	X	X	X							X
Guam																				
Virgin Islands							X	X												X

*MINS
 **Considered in text
 ***Venial in need of supervision

APPENDIX X

Maine's Current Statutory Provisions
Relating to Abuse and Neglect*

*The descriptive review contained in this Appendix is excerpted from "Goals of Maine's Juvenile Justice System: Report on Task 1" prepared for the Commission to Revise Statutes Relating to Juveniles by its staff in February, 1976.

A. Neglected Children

The State assumes the role of parens patriae when a child is neglected by his parents or guardians. However, parents do have a constitutional right to raise their children without state intervention.¹ But this right depends on the "reasonable performance by the parent of those duties which are owed to the child".² Therefore, it should only be limited for the most urgent reasons. If a parent fails to perform these duties, then the State must assume them since "the welfare of the child is the controlling consideration".³ One must balance the welfare of the child with the parental right to custody of the child. If the welfare of the child requires it, the court may limit this parental custodial right and place the child in protective custody.⁴

1. Identification of a Neglected Child

A child under the age of 18 years is deemed to be neglected if he is living in circumstances which seriously jeopardize his health, welfare or morals.⁵ The

¹ Danforth v. State Department of Health and Welfare, 303 A.2d 794, 796 (Me. 1973).

² Merchant v. Bussell, 139 Me. 118, 122, 27 A.2d 816 (1942).

³ Id. 139 Me. 118 at 122.

⁴ 22 M.R.S.A. Section 3792 (1975).

⁵ 22 M.R.S.A. Section 3792 (1975).

distinction between a neglected child and a juvenile offender in the statutes is vague. A juvenile offense, it must be remembered, may occur when a child is "living in circumstances of manifest danger of falling into habits of vice and immorality".⁶ Certainly many neglected children fall within this classification.

Whenever any authorized agent of the Department of Mental Health and Corrections, a sheriff or police officer, or any three citizens believe that a child is neglected and in need of protective custody, they may file a petition with either the probate or the district court.⁷ The court shall then order a hearing on the matter.⁸

2. Balancing Parental Rights to Custody and Children's Right to Protection

A judicial hearing is the basic procedure for balancing the rights of a child and his parents. From the parents' viewpoint, the hearing is an accusatory process.⁹ They may be deprived of the right to raise their child, and it may also be demonstrated that their conduct falls outside the norms established by society

⁶ 15 M.R.S.A. Section 2552 (1975).

⁷ 22 M.R.S.A. Section 3791 (1975).

⁸ Id.

⁹ Danforth, supra., note 153 at 799.

for child-rearing.¹⁰ In fact, the results of the hearing may form the basis of a criminal prosecution against the parents.¹¹

However, the State's statutory objective is not to punish the parent but to protect the welfare of the child.¹² The court is not concerned with whether the parent failed to care for the child deliberately or only through inability or misfortune.¹³ The court must decide the matter as would a "wise, affectionate, and careful parent".¹⁴ If it is found that the child is neglected and needs protective custody, then the court may order the child committed to the custody of the Department of Health and Welfare or any other suitable person.¹⁵

10

Id.

11

Id.

12

Merchant, supra. note 2 at 122.

13

Id. However, it should be noted that historically such a distinction was drawn. "Neglect" implied a deliberate failure to care for a child while "dependency" indicated failure to provide for a child because of inability. Foster, H., "Children and the Law", unpublished mimeographed materials prepared in 1972 for use in conjunction with Ploscowe and Freed, Family Law (Little, Brown and Co., 1963).

14

Roussel v. State, 274 A.2d 909, 926 (Me. 1971).

15

22 M.R.S.A. Section 3792 (1975).

Case law in Maine states that a parent may lose custody if he is unfit.¹⁶

3. Protective Custody

Ordinarily custody of children will be granted only after a dispositional hearing has been held.¹⁷ However, if a court finds that a family's life presents a "serious, immediate and urgent danger to a child's safety or life", such court may grant temporary custody of that child to the Department of Health and Welfare or to any other suitable person pending a dispositional hearing.¹⁸

Although courts will consider the rights of parents at such a hearing, after custody is granted to the Department, the parents lose most of their rights to

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Stanley v. Penley, 142 Me. 78, 82, 47 A.2d 710 (1946). In the Stanley case it was held that a father was fit since he was financially responsible for his children, had a comfortable home and asserted his right to custody at the earliest reasonable time. However, in a similar case, a father lost his custodial rights because he had made no effort to see his child even though he reasonably could have. Merchant v. Bussell, 139 Me. 118, 27 A.2d 816 (1942).

In Wright v. Superintending School Committee, 331 A.2d 640, 644 (Me. 1975), the court stated in dictum that a person is "unfit" to maintain custody of a child if he is "unsuitable, incompetent, or not adapted for a particular service". In that case, which involved a teacher who had been fired from a tenured position because he was "unfit" to teach, the court implied that child custody cases used a similar test. The court stated that a teacher would be judged unfit if he lacked sufficient knowledge, was unable to convey the material effectively to the student, was unable to maintain classroom discipline, used corporal punishment, was physically unable to teach or had engaged in previous acts of misconduct. *Id.* at 646.

17

Id.

18

Id.

the child. Specifically, they lose the same rights they would lose if their child were adopted.¹⁹

A children's institution or any person to whom the child is committed is theoretically given full legal custody and control of the child.²⁰ If no guardian is appointed, then the Department of Health and Welfare has custody.²¹ However, this custody does not encompass all the rights which a parent normally possesses.²²

19

22 M.R.S.A. Section 3793 (1975). These include all legal rights and all legal obligations of obedience. 19 M.R.S.A. Section 535 (1954). However, the court can order the parent to support the child. 22 M.R.S.A. Section 3792 (1975).

20

Id.

21

Id.

22

For example, before any change is made in the custody order, the Department must notify the parents or guardian of the child. The court will then examine the conditions and welfare of the child and receive testimony from any relative who has been a foster parent of the child. Id. The court may then make any order for the future care of the child which "justice may demand". Id. Although the parents have been notified of the hearing and will presumably attend, the court is not required to consider any improvement in the parent's situation which might indicate that the child could safely be returned to his family. However, the parent is protected to some extent by the fact that the child may not be legally adopted for one year after the parent is divested of custody. Id.

The parent is also given authority to request that the child be placed in a family of the same religion as the parent. 22 M.R.S.A. Section 3795 (1967). However, if such a family cannot be found, then the Department may place the child as it deems in the child's best interest. Id.

The parent may also appeal any decision divesting him of custody. 22 M.R.S.A. Section 3793 (1975). Pending the appeal, the custody of the child remains with the Department or any suitable person. Id.

Natural parents may petition the Superior Court to have custody of the child restored to them.²³ If the court finds that the natural parents have "sufficient ability and inclination suitable to provide for maintenance and education of said child", the court will restore custody to them.²⁴

Statutory enactments also included a provision for voluntary relinquishment of custody. If a child's parents request it, or if a child is without parents, the Department may assume custody of the child without judicial intervention.²⁵ Although one of the purposes of the section is obviously to provide for a child when his parents are temporarily unable to maintain custody, the section does not provide any procedure for regaining custody. Therefore, it must be assumed that the parents will have to petition the court and prove that they are able to care for their child before that child will be returned to them.²⁶

The Department has an obligation to investigate all cases of cruel or injurious treatment of children which

²³
22 M.R.S.A. Section 3798 (1975).

²⁴
Id.

²⁵
22 M.R.S.A. Section 3794 (1969).

²⁶
22 M.R.S.A. Section 3798 (1975).

come before it.²⁷ Furthermore, it must cause all offenders against any law for the protection of children or for the prevention of cruelty to them to be prosecuted.²⁸

B. Abused Children²⁹

Maine also seeks to protect battered or abused children.³⁰

The statutory purpose is to protect those children:

whose health and welfare are adversely affected or threatened by the conduct of those responsible for their care and protection in order to prevent further abuse and neglect, to enhance the welfare of these children and preserve family life whenever possible.³¹

Maine seeks to accomplish this goal through mandatory reporting of suspected abuse or neglect by physicians, institutions and other persons of appropriate authority.³² A child is deemed abused whenever he suffers "physical or mental injury,

27

22 M.R.S.A. Section 3791 (1959).

28

Id. Certainly the threat of a criminal prosecution may make persons reluctant to inform the Department of such incidents. If a parent is convicted, the child will lose him. But normally, parents will not be convicted since proof must be beyond a reasonable doubt. DeFrancis, Vincent and Carroll Lecht, Child Abuse Legislation in the 1970's, 4 (1974). Also, once a report is made, a parent may resent the child further and the child may be subject to increased dangers. Id.

29

The statutory distinctions between abused and neglected children are very slim and the statute frequently provides for concurrent treatment. For general information on abuse, see appendices II, III, IV, V, VI and VII.

30

22 M.R.S.A. Sections 3851 et. seq. (1975).

31

22 M.R.S.A. Section 3851 (1975).

32

Id.

sexual abuse, negligent treatment or maltreatment".³³ Thus, the statute recognizes that mental abuse may be as damaging to a child as physical abuse.

The statute requires that certain persons notify the Department if they know or have reasonable cause to suspect that a child has been subjected to abuse or neglect.³⁴ They must also make a report if they observe conditions which would reasonably result in abuse.³⁵ However, no such person must make a report if he gained the information through treatment of the individual suspected of child abuse.³⁶ Any person may make a report to the Department if he knows or reasonably suspects that any child has been abused.³⁷

Reports of "child abuse or neglect" must be made immediately by telephone to the Department.³⁸ It may be assumed

33

22 M.R.S.A. Section 3852(1)(1975). Abuse must have been done by a "person who is responsible for the child's welfare". Some commentators state that such a section implies that the reporter must make a determination of guilt. Also, the circumstances of the injury must indicate "that the child's health or welfare is harmed or threatened thereby". Id. This definition seems unclear since even an accidental injury will harm the health of the child.

Those parents who refuse to provide a child with medical care because of their legitimate religious beliefs may not be prosecuted under the statute, although the court may order that the child be treated. Id.

34

22 M.R.S.A. Section 3855 (1975).

35

Id.

36

Id.

37

Id.

38

22 M.R.S.A. Section 3854(1)(1975).

that reports of suspected child abuse or circumstances which indicate that the child will reasonably be subjected to abuse must also be made immediately.³⁹

Furthermore, if any person or official who is required to make a report knows or has reasonable cause to suspect that a child died because of abuse or neglect, he must report that fact to the medical examiner.⁴⁰ The examiner will then inform the district attorney, the police, and the Department.⁴¹

This section may force any person required to make a report to incriminate himself. Under 22 M.R.S.A. Section 3857 (1975), any person who is required to make a report and fails to make the report is subject to criminal penalties. Yet, in hindsight, it is easier to determine that the person should have reasonably feared for the health of the child.

Any person who makes a report in good faith is immune from all civil or criminal liability which might result from his action.⁴² There is a rebuttable presumption that the person acted in good faith.⁴³ However, if the person knowingly and willfully fails to make a report when the child is

39

Id.

40

22 M.R.S.A. Section 3855 (1975).

41

Id.

42

22 M.R.S.A. Section 3856 (1975).

43

Id.

subject to child abuse, and the parent is subsequently convicted of child abuse, the person shall be subject to a fine of up to \$500.⁴⁴

In every case involving child abuse or neglect, courts shall appoint a guardian ad litem to represent the child.⁴⁵ This guardian may make any investigation he considers necessary to adequately represent the interest of the child.⁴⁶ The court may also order a physician, psychologist or psychiatrist to examine either the child or the parent.⁴⁷ To insure the fairness of the examination, no statement during the examination may be introduced into evidence if it would tend to incriminate the examined party.⁴⁸

All records and reports concerning child abuse are confidential and any person who releases information contained in them is subject to a fine and/or imprisonment.⁴⁹ This confidentiality is not absolute, however. The Department may release information to any child protection agency which is

44
22 M.R.S.A. Section 3856 (1975).
45
22 M.R.S.A. Section 3858 (1975).
46
Id.
47
Id.
48
Id.
49
22 M.R.S.A. Section 3859 (1975).

investigating known or suspected child abuse or which is treating either an abused child or his family.⁵⁰

The Department may also release the information to a police or other law enforcement agency which is investigating a report of the child abuse.⁵¹ The information may also be released to a physician or other person seeking to place a child in protective custody to determine if the child is abused.⁵² An agency which has the legal authorization to care for and treat an abused child or his parents may also obtain the information.⁵³ Any court may obtain the information, but unless public disclosure is necessary for the resolution of the case, the information will be received in camera.⁵⁴ Finally, a grand jury may review the information.⁵⁵

⁵⁰
22 M.R.S.A. Section 3860 (1975).

⁵¹
Id.

⁵²
Id.

⁵³
Id.

⁵⁴
Id.

⁵⁵
Id.

APPENDIX XI

Maine's Current Regulatory Provisions
Relating to Child Protective Services*

*The descriptive review contained in this Appendix is excerpted from "Regulations of Maine's Juvenile Justice System" prepared for the Commission to Revise Statutes Relating to Juveniles by its staff in July, 1976.

Because the Department of Human Services has a general responsibility to protect the health and welfare of the citizens of Maine, it has the authority to provide services to children, including those children who have or may come into conflict with the law.¹

Most of the programs of the Department which directly affect children are administered through the Bureau of Social Welfare.² Basically, these programs seek to provide a child with a "permanent legal family".³ Whenever possible, the Bureau attempts to preserve the natural family either by allowing the child to remain with this family or by promoting his return to this family. However, when this is not possible, the Bureau will place the child in an alternative family relationship with either foster

1

See, Statutes, 132-134 (1976). The juvenile court may specifically place a child under the care of the Department either by directly committing him to the Department, 15 M.R.S.A. Section 2611(4) (C) (1964), or by committing him to a family under the supervision of the Department. 15 M.R.S.A. Section 2611(4) (E) (Supp. 1975). See, Statutes, 100-102 (1976).

These services are also, at least theoretically, available to children who commit acts which would be criminal if they were adults.

2

Statutes, 132-134 (1976). However, also see the discussion on alcohol and drug treatment facilities in Section III.

3

See, Department of Human Services, Approved Policy Statement, No. 45, 1 (Aug. 1, 1973) (hereinafter referred to as Human Services, A.P.S.). The regulations of the Department of Human Services occur within the Maine Division of Child Welfare Policy Manual except when these regulations have been superseded by Approved Policy Statements. Frequently, no notation is made of the repeal of the regulations in the Policy Manual. Furthermore, many persons do not use the manual although it is still in effect. Interview with Freda Plumley, Substitute Care Consultant, Bureau of Resource Development, Department of Human Services in Augusta, Maine, April 13, 1976. However, because these regulations are still in effect, this report will discuss the relevant provisions.

parents or adoptive parents.⁴

Because the services which are available can be used to assist children who come into conflict with the law, it is necessary to carefully analyze the nature and extent of the available services, including any restrictions which have been placed on the provision of these services. This includes a consideration of procedures to identify children needing these services, accept such children into a program and discharge them from a program. Moreover, the actual services available must be considered.

1. Identifying the Child

Certainly the first step is identifying the child who may require services offered by the Department. Technically, the Department provides services to children either because the child has been adjudicated an offender or because the child needs protective services.⁵ However, in actuality, these categories overlap. Thus, the regulations include children who have, or will, come into conflict with the law within the classification

⁴ Human Services, A.P.S. No. 28, 3 (March 1, 1973).

⁵ See, Statutes, 132 (1976).

of children who need protective services.⁶
Children may also receive services as a member
of a family.⁷ Because the process of identi-
fying an eligible child is different for each
classification, it is necessary to discuss each
separately.

a. Juvenile Offender

After the juvenile court judge has ad-
judicated a juvenile an offender, the judge
may commit the child to the Department.⁸

Before making this decision, the judge may
order a caseworker from the Department to in-
vestigate the needs of the child and to recom-
mend a suitable placement for the child.⁹

However, the caseworker may not recommend
that the court commit the child to the Depart-
ment until he has discussed the case with his

⁶ Child protective services are available to children who are, or may be, "neglected, abused, exploited, or delinquent". Human Services, A.P.S. No. 52, 1 (Nov. 1, 1973). Presumably a "delinquent" child may be one who is or may come into conflict with the law. Thus, the regulations state that the juvenile offenders act is based on child protection. Id.

⁷ Child Welfare Policy Manual, ch. IV, p. 5 (1965).

⁸ The procedure by which a juvenile is identified as an offender is discussed extensively in Statutes (1976).

⁹ See, Child Welfare Policy Manual, ch. III, p. 2 (1965).

immediate supervisor.¹⁰

When the court commits the child to the Department, the Department must provide services to the child.¹¹ Such a child is classified as a C5.¹²

b. Children Needing Protection

Children may also be placed with the Department if they need protection. The primary purpose of this service is to eliminate threats to the well-being of the child while allowing him to remain in his own home.¹³ When this is not possible, the child may be removed from his home and provided with substitute care services.¹⁴

A child is considered in jeopardy when he is in a situation which may result in bodily harm or injury, physical or emotional deprivation or presents a serious impairment to his capacity for healthy adjustment and normal

¹⁰

Id.

¹¹

Id. Child Welfare Policy Manual, ch. IV, p.4 (1965).

¹²

Child Welfare Policy Manual, ch. V, p. 2 (Rev. Aug. 1967). See text at note 42.

¹³

Human Services, A.P.S. No. 52, 1 (Nov. 1, 1973).

¹⁴

Id. Substitute care services are discussed at text following note 61.

development.¹⁵ This may be indicated by certain specified symptoms including delinquent acts,¹⁶ gross truancy,¹⁷ and exposure to unwholesome or demoralizing circumstances.¹⁸ Other symptoms may include lack of supervision, emotional neglect, and exploitation which includes encouraging the child to steal or en-
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gage in other antisocial behavior.

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Id. at 3.

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Id. Delinquent acts include truancy, stealing, sexual misbehavior, vandalism, association with questionable persons, and running away from home. Id. For a discussion of these actions as providing a basis for the juvenile court's jurisdiction, see Statutes (1976).

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Human Services, A.P.S. No. 52 (Nov. 1, 1973). The Department accepts the statutory definition of habitual truancy. 15 M.R.S.A. Section 2502(2) (1965) (discussed at ABA, Statutes, 28 (1976). However it limits its responsibility to those instances when the truancy is a result of the child's home environment, and states that the schools have the primary responsibility when the truancy is a result of the child's relationship to the school. Human Services, A.P.S. No. 52, 4 (Nov. 1, 1973).

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Id. This is similar to the juvenile court's jurisdiction over a child who knowingly and willfully associates with grossly immoral people, 15 M.R.S.A. Section 2552 (Supp. 1975), discussed at Statutes, 44-45 (1976); and over a child who lives in circumstances of manifest danger of falling into habits of vice and immorality. 15 M.R.S.A. Section 2552 (Supp. 1975), discussed at Statutes, 47-48 (1976).

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This category includes those situations which give a child "a perverted sense of values and standard of behavior, which may corrupt or undermine their morals". Human Services, A.P.S. No. 52, 5 (Nov. 1, 1973).

Id.

Children who need protection may be either voluntarily placed with the Department by their parents or guardians or referred to the Department by members of the community.²⁰ Usually, the child himself may not request services.²¹

c. Family Services

The Department may also provide services directly to a family to strengthen the family life and guarantee that the child will have the right to "sound physical, emotional, intellectual and spiritual development".²²

In order to be eligible for these services, the child must be under eighteen years of age; the problem must be treatable by social casework; and no other agency must be already providing these services to this family.²³

²⁰ Child Welfare Policy Manual, ch. v, p. 1 (Rev. Aug. 1967).

²¹ Human Services, A.P.S. No. 48*, 1 (Oct. 3, 1973). Services may be offered without the consent of the parent or guardian only when an extreme situation exists, the jeopardy to the child is severe, and that jeopardy may be alleviated only by legal intervention to protect the child. Id. Thus, the child must be in a situation in which court intervention for his protection is allowed.

²² Child Welfare Policy Manual, ch. IV, p. 5 (1965).

²³ Id.

The problems which may warrant the provision of these services include conflicts between the parent and child resulting in disciplinary problems, withdrawal and acting-out; problems requiring planning for the child's treatment including emotional disturbances, school problems, and delinquency; and parental neglect.²⁴

These cases may be referred to the Department either by a parent seeking voluntary assistance²⁵ or by members of the community²⁶ seeking protection of the child.

2. Accepting the Case

After a child has been referred to the Department, the Department must decide whether it will provide services.²⁷ In order to make this determination, the Department will assess the needs of

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Id. at 6.

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Id. at 5. When a case is referred voluntarily, service will be given only if personnel is available. Id. The client may terminate this service at will or by agreement with the agency. Id. at 7. The agency may terminate when the service is no longer "purposeful". Id.

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Id. at 5. These sources include parents, relatives, individuals, professional people, community officials, other social or health agencies and the courts. Id.

27

The Department must take those children who are committed to it by the court. However, it is not required to provide protection to all children. Since some of the children who have been identified as needing this protection could be children who are, or may be, in conflict with the law, it is necessary to consider any standards which exist for making the determination to provide services.

the child.²⁸ This involves identifying the problem, understanding the needs of the persons involved, and determining the resources available to meet these needs.²⁹

This assessment is facilitated by the development of records on the case.³⁰ These records contain verified factual data; social and sometimes medical histories; observations of attitudes, patterns of behavior and environmental conditions; a statement of the problem from the points of view of various people concerned; and the agency's methods of helping solve the problem.³¹

Usually records of both the child and his family are gathered. The record of the child must include a medical report, psychological report,³² school records and placement information. The caseworker must also record his observations about³³ the child.

28 Human Services, A.P.S. No, 39, 1 (July 1, 1973).

29 Id. at 1-2.

30 Child Welfare Policy Manual, ch. IX, p. 1 (1965). These records must be made within three days of the completion of the screening. Id. at 6. Information on these records is confidential and may only be released under certain specified circumstances. Human Services, A.P.S. No. 35, 1 (April 1, 1973).

31 Child Welfare Policy Manual, ch. IX, p. 8-9 (1965).

32 Id. at 4-5.

33 Id. at 9. This is based on observations from physical, social, emotional and intellectual standpoints and on background information supplied by the parent.

An intake study of the family is also made.³⁴
This study includes any background information
on the family³⁵ and a description of the physical
condition of the home and the care of the child-
ren.³⁶ Finally, the caseworker must assess the
parent-child relationship, the abilities and prob-
lems of the parent, the worker-client relationship
and the family's relationship to the community.³⁷

After this intake report has been completed,
the worker and his supervisor must decide whether

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Id. at 4.

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Id. at 7. This includes information concerning marriages, divorces, births and deaths; income; family health; development and behavior of the children; and school and job achievement of the parent.

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Id. at 7. It is interesting to note that the courts in Maine have considered the physical condition of the home and the economic status of the parent in determining parental liability for negligence in a tort action regarding injury to the child. Thus, the court has stated that because children in tenements have the right to light, air and sunshine, the parent has not failed his duty to the child if he allows the child to play outside unattended. Wood v. Balzana, 137 Me. 87, 15 A.2d 188 (1940). Perhaps the courts would also use this same reduced degree of parental care in determining whether the physical condition of the home should warrant interference into the family life by the Department.

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In making this assessment the worker must understand the needs and desires of the client, place these needs in a relative hierarchy, and understand the abilities and priorities of the individual. The worker must also determine the resources which the Department and other agencies have available to assist the client in achieving his objectives. Human Services, A.P.S. No. 39, 1-2 (July 1, 1973).

to accept the case for continuing service.³⁸

The Department will intervene to protect a child only if it is convinced that such intervention will be necessary to protect the child.³⁹

The standards for intervention are more strict when the Department seeks to remove a child from his home. Thus the Department will only seek temporary custody of the child as a last resort, and only if the child is in "clear, serious and immediate danger".⁴⁰ Similarly, the Department will only file a petition for protective custody when the parents are unwilling, unable or unavailable to improve the child's situation.⁴¹

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Child Welfare Policy Manual, ch. IX, p. 7 (Rev. Aug. 1967). Few standards exist for determining whether to accept the case are included in the regulations. Usually, the worker must only determine whether the Department has resources which will meet the needs of the client. When the application is one for voluntary services, the worker must determine if the Department has sufficient personnel to meet the request. Child Welfare Policy Manual, ch. IV, p. 5 (1965).

If the case is accepted, then the record must be updated to include the casework plan and any further activity which has been taken in order to reach the goals stated in the plan. Child Welfare Policy Manual, ch. IX pp. 7-8 (1965). These entries must be made at least every four months. Id. at 8.

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Human Services, A.P.S. No. 52, 2 (Nov. 1, 1973). Even when the Department does intervene, parents must be given the opportunity to improve their care of the child. Id. at 5.

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Id.

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Id.

A child whose case has been accepted by the Department may be placed in one of thirteen categories.⁴² However, only the following are directly related to children who are, or may be, in conflict with the law:⁴³

- V2 - children under 18 years who need and can benefit from foster care
- V3 - children who need temporary foster care and have no town of settlement
- V6 - unmarried mothers
- C1 - children for whom a district or probate court has ordered care pending hearing or appeal of a petition for protective custody
- C2 - children committed to the Department by the district or probate court and for whom the Department holds full parental rights
- C4 - children committed to the Department by a district or probate court about whose commitment the Attorney General's Department has raised questions regarding the technical legality
- C5 - children committed by the juvenile court.

Although many of the same services are available to the child regardless of the category in

⁴² Child Welfare Policy Manual, ch. V, pp. 1-2 (Rev. Aug. 1967). This does not include children who are receiving family services. Discussed at text following note 22.

⁴³ Child Welfare Policy Manual, ch. V, pp. 1-2 (Rev. Aug. 1967).

which he is placed, slight but sometimes significant variations do occur. These variations are also apparent in procedures involving the termination of services.

3. Services Available

The services which the Department offers must also be evaluated to determine whether they offer a significant and meaningful opportunity for allowing a child to remain in his home or return to his home.⁴⁴ The services which are available must meet the needs of the child, and his family, in a reasonable and not overly restrictive manner. Moreover, when the child is placed outside of his home, he should usually be placed in a homelike environment.

Thus, it is necessary to carefully examine the services which are available to determine the amount of assistance these services can provide to children who need the help.⁴⁵

44 See note 3.

45 The Department also provides other services which will not be discussed here since no regulations concerning the provision of these services were available. These include group homes and campership programs. See, Computerized Objectives of the Department.

a. Family Services

When the problems of the child are caused directly by his family, both the child and his family may receive assistance through the family voluntary and protective casework services.⁴⁶ This service seeks to restore family living when family disorganization and disintegration threaten the child's healthy maturation, by dealing with the problems of a child who requires planning for the treatment and care of emotional disturbance, school problems and delinquency.⁴⁷ The service may also deal with conflicts between the parent and child which may be indicated by disciplinary problems, withdrawal or acting out behavior.⁴⁸

b. Day Care Service

The Department also provides day care services to any child under the age of eighteen who requires or can benefit from this service,

⁴⁶ Child Welfare Policy Manual, ch. IV, p. 5 (1965). See text after note 22 for a further discussion of eligibility.

⁴⁷ Id. at 5-6. Priority in offering this service must be given to those children who are receiving cruel or injurious treatment. Id. Persons may voluntarily receive this service only if sufficient personnel are available. Id. at 5.

⁴⁸ Id. at 6.

if day care is appropriate to meet his needs.⁴⁹

This service seeks to protect the child, provide him with conditions favorable to his development, and educate him.⁵⁰ In order for a child to be placed in this program, his parents or guardian must give their written consent.⁵¹ Moreover, the parent or guardian, if financially able, must pay for the cost of this care.⁵²

c. Unmarried Mothers Program

The Department also provides certain services to unmarried mothers. Thus the Department will refer these women to appropriate agencies which can provide them with

⁴⁹ Human Services, A.P.S. No. 43, 1 (July 1, 1973). These services offer care and protection to the child during part, but not all of the day. Although this service, like most of the services of the Department, is not specifically designed to help the juvenile offender, it could certainly be used to provide services, such as after-school care or family counseling, to such a child.

Among the children eligible to be served are those who have been committed to the Department, or are currently in foster care. Others include children whose families are now receiving protective services. Id.

⁵⁰ Id.

⁵¹ Id. at 3.

⁵² Id. However, if the child does not have suitable clothing and his parents are unable to provide him with it, the Department may give the child up to \$50.00 a year in order to get this clothing. Id. at 4.

assistance.⁵³

The Department may also directly provide certain services including payment of board, medical treatment and transportation.⁵⁴ Other services available include psychological or psychiatric referral; vocational, religious or legal assistance; cosmetic dental work and education.⁵⁵ In providing these services, the Department must make maximum use of the resources which are available to the client, the putative father and her family.⁵⁶

An unwed mother who has been committed to the Department may also receive an abortion.⁵⁷ However, the child must first discuss the abortion with the physician, her foster parents, and her own parents if they are actively involved with the child.⁵⁸

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Memo, in Child Welfare Policy Manual, June 16, 1969. Again, this is a service which can be used to help children within our population, such as prostitutes, although the program was not specifically designed for this purpose.

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Memo, in Child Welfare Policy Manual, Dec. 10, 1970. These services have the first priority.

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Id. The Department, however, seeks to reduce its expenses by delaying substitute placement of the mother until the sixth or seventh month of the pregnancy. Whenever possible, the mother shall receive care at a clinic rather than a hospital. Id.

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Id.

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Human Services, A.P.S. No. 50 , 1 (Nov. 13, 1974).

58

Id.

Moreover, the caseworker, unit manager, regional director and commissioner must give their consent.⁵⁹

d. Voluntary Temporary Foster Care

A child's parents may voluntarily contract with the Department to have the child placed in temporary foster care for six months.⁶⁰

However, except in emergency situations, this service is not available to teenagers or delinquent children because of their poor prognosis.⁶¹

e. Substitute Care

The most important program offered by the Department involves providing substitute care services. Under this program, the Department assumes the role of legal parent to the child and attempts to provide the child with a permanent legal family in which he can reach adulthood and self-sufficient independence.⁶²

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Id.

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Memo, in Child Welfare Policy Manual, Sept. 7, 1971.

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Id.

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Human Services, A.P.S. No. 28, 1 (April 1, 1973). The natural parent cannot be deprived of custody, except when the child is adjudicated an offender, unless he receives a meaningful hearing. Danforth v. State Department of Health and Welfare, 303 A.2d 794 (Me. 1973). See, also Human Services, A.P.S. No. 45, 1 (Aug. 1, 1973).

However, in the usual case, the Department delegates the actual discharge of many of the parental duties to other persons.⁶³

Thus, the Department assumes authority over the full custody and control of the child; the power of person, property, earnings and education similar to that of a guardian over his ward; and the right to consent to the adoption of the child.⁶⁴

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Id. Under the regulations, persons who may discharge this function include the natural parents, the "adoptive parents",* foster parents, and other individuals and resources. Id.

*Since adoptive parents assume the role of legal parents, presumably the regulations mean to speak of potential adoptive parents who have not yet completed the legal process of adoption.

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Id. Under the protective custody statute, parents are divested of all legal rights except those involving their duty to support the child. 22 M.R.S.A. Section 3793 (Supp. 1975). However, no mention of the rights of the parent are made under the juvenile justice statute. Thus, in 15 M.R.S.A. Section 2611(4)(C) (Supp. 1975), the statute merely allows the court to commit the child to the Department. Even the regulations of the Department specify that a child may not be placed for adoption until a court order has divested his parents of their rights. Child Welfare Policy Manual, ch. V, p. 16 (Rev. Sept. 1965). Presumably, this is because parents of a juvenile who is an offender have not received the opportunity for a hearing on their right to raise their child. Danforth v. State Department of Health and Welfare, 303 A.2d 794 (Me. 1973).

The Department must also consent to the marriage of committed children, Human Services, A.P.S. No. 13, 1 (Sept. 8, 1972); the sterilization of such children, Human Services, A.P.S. No. 2, 1 (June 19, 1972); and the provision of an abortion to such child, Human Services, A.P.S. No. 50*, 2 (Nov. 13, 1974).

The Department acts "in loco parentis".⁶⁵

According to the regulations, this role is that of a substitute parent as defined by "societal norms".⁶⁶ The Department cannot delegate these responsibilities to the foster parents⁶⁷ and has the duty to supervise these parents.⁶⁸

The natural parent also retains certain

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Human Services, A.P.S. No. 28, 1 (April 1, 1973). According to case law, a person acts "in loco parentis" when he places himself in the position of a lawful parent, assumes parental status, and discharges parental duties without undertaking the formalities necessary to adopt the child. Jensen v. United States, 78 F. Supp. 974 (D. Me. 1948); Bourbeau v. United States, 76 F. Supp. 778 (D. Me. 1948).

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Human Services, A.P.S. No. 28, 2 (April 1, 1973). Under the common law a parent has the duty to educate and support the child and in return has the right to custody, control and discipline of the child. Jensen, supra. at 978.

67

Human Services, A.P.S. No. 28, 2 (April 1, 1973). Thus, foster parents have no right to retain custody of the child. Roussel v. State, 274 A.2d 909 (Me. 1971).

68

Human Services, A.P.S. No. 28, 2 (April 1, 1973). In tort cases, parents have been held to the duty of exercising "reasonable care" for the child's protection. Gravel v. LeBlanc, 131 Me. 325, 162 A. 789 (1932). Presumably, the Department must exercise at least this degree of care in supervising the foster home.

rights in the child.⁶⁹ Thus, he has the express right to petition the court for restoration of his custody of the child.⁷⁰ This may include an implied right to receive services from the Department which will assist him in restoring this custody.⁷¹ He also may specify the religion of the family with whom

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The rights which a parent retains will vary depending on whether the child is committed to the Department because he is adjudicated an offender or because he needs protection. If the child is an offender, then the specific interests of the parent have not been considered at a court proceeding. See note 443.

If the child needs protection, then he may be adopted one year after his commitment to the Department. 22 M.R.S.A. Section 3793 (Supp. 1975). Obviously, this may cause parents to prefer having a child adjudicated as an offender.

The natural parent also retains the duty to support the child to the extent that he can provide that the child is not in an adoptive home. Child Welfare Policy Manual, ch. V, p. 30 (1965).

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22 M.R.S.A. Section 3792 (Supp. 1975); Human Services, A.P.S. No. 28, 2 (April 1, 1973). The court may allow the parent to regain custody of the child if it is satisfied that the objects of commitment have been accomplished. Id. However, there is no provision in the juvenile justice act which permits the parent to petition for a return of custody if the child is committed under that act.

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Thus under the regulations, the Department must continue to offer the parents services which will help them improve their circumstances and resume the care and custody of the child. Human Services, A.P.S. No. 45, 1 (Aug. 1, 1973). Wherever possible, the parent must have the opportunity to become actively involved in the care and plans for the child. Id. at 2. Moreover, the Department must assess the progress and prognosis of the family within one year of the commitment in order to determine if the child can be returned to his parents. Id.

the child is placed.⁷² Whenever it is feasible, the parent should be allowed to visit the child.⁷³ The parent further has the right to have the Department assess the progress which has been made toward returning the child to his own home.⁷⁴ Finally, it may be presumed that the parent will have the rights over an adult child when the child becomes eighteen.⁷⁵

The foster parent⁷⁶ only has the right to make reasonable decisions regarding the

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By statute the child must be placed in a family of the religion which the parent has specified, if a suitable family can be found. 22 M.R.S.A. Section 3795 (Supp. 1975). The religious beliefs of the parent are also considered in the case of abortions (Human Services, A.P.S. No. 50*, 1 (Nov. 13, 1974)) and sterilizations (Human Services, A.P.S. No. 2 (June 19, 1972)).

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Human Services, A.P.S. No. 45, 2 (Aug. 1, 1973). Thus visitation may be denied only if it is "evidently and clearly" doing damage to the child or if the child is to be adopted. Human Services, A.P.S. No. 28, 5 (April 1, 1973).

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Human Services, A.P.S. No. 45, 2 (Aug. 1, 1973).

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The rights of the Department cease at the time the child becomes eighteen. See text at notes 483 and 485.

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Foster parents must make "reasonable decisions" regarding the child. Human Services, A.P.S. No. 28, 2 (April 1, 1973). Few standards exist for selecting a foster home. Thus, foster parents must meet the minimum requirements and standards set forth by law. Child Welfare Policy Manual, ch. VI, p. 1 (1965). Furthermore, the motive or need of the person seeking to be a foster parent must be one which will contribute to the healthy development of the child. Id. Although the Department will normally study the proposed foster homes, the home of a relative of the child and a home which will be used for a child over the age of 16 will be screened but not studied. Id. at 2.

day to day care of the child, including the right to love, nurture, discipline, educate⁷⁷ and make certain decisions.⁷⁸ But the foster parents do not receive any legal rights in the child merely because the child has remained in the foster home for a considerable period of time.⁷⁹

This distribution of authority has important consequences when the actual provision of services is analyzed. Because the legal custody of the child resides in the Department, the Department and not the foster parent must determine the services to be provided the child. Obviously many of these services are important in assisting the child in returning⁸⁰ to his natural family.

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Human Services, A.P.S. No. 28, 2 (April 1, 1973).

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Thus, a child between ages ten and sixteen may hunt without a license if he is accompanied by an adult. The foster parent has the duty to supervise this child. Child Welfare Policy Manual, ch. V, p. 75 (1965).

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Roussel v. State, 274 A.2d 909 (Me. 1971). See note 446.

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Such return is the basic objective of substitute care placement. Human Services, A.P.S. No. 28, 3 (April 1, 1973). This is also the objective for juveniles who are placed with the Department by the juvenile court. Thus supervision of such a child is aimed at rehabilitating the child through casework services to the child and his family. Child Welfare Policy Manual, ch. IV, p. 4 (1965).

(i) Support

Certain the most elementary service is the support of the child. Thus, the Department pays the foster parents or private child care institution a specified amount for the actual support of the child.⁸¹ The Department also provides the child with a montly clothing allowance.⁸² Normally, the foster parent will provide the child with food⁸³ and transportation.⁸⁴

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Child Welfare Policy Manual, ch. V, p. 42 (1965). Board may also be paid to relatives who are caring for a committed child, but it usually may not be paid to the child's natural parents. Id. The basic rate of payment to foster parents is \$65 per month. Memo from Edgar Merrill, in Child Welfare Policy Manual. However, this rate increases to \$130 for certain hard-to-place children. Id. Moreover, the rate at private residential facilities range from \$80 a month to \$250 a month at Sweetser, Spurwink, and the Babour Home for Crippled Children. Id.

When funds are available, the child will receive Christmas money. Human Services, A.P.S. No. 15, 1 (Sept. 11, 1972).

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Child Welfare Policy Manual, ch. V, p. 43 (1965). This allowance ranges from \$7 per month for children between the ages of one and four to \$16 per month for children between ages fifteen and twenty-one. This clothing is purchased from local stores on an independent basis. Human Services, A.P.S. No. 58*, 1 (Nov. 1, 1974).

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Thus, the Department will not provide money for purchasing hot lunches at school. Child Welfare Policy Manual, ch. V, p. 58 (1965).

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Human Services, A.P.S. No. 59, 1 (May 1, 1974). A committed child may not get a driver's permit unless the child is over the age of seventeen and demonstrates a need for such permit. Moreover, he must obtain the written consent of the regional director or assistant regional director. Human Services, A.P.S. No. 4, 1 (July 14, 1972).

(ii) Medical Care

The Department however does provide the child with complete medical care and with dental care.⁸⁵ This includes payment of drugs when authorized by the caseworker.⁸⁶ However, the amount of orthodontic services is limited by the regulations.⁸⁷

(iii) Psychiatric Care

A limited amount of psychiatric care may also be provided to the child. Thus, children who have been recently accepted for protective service may receive preventive psychiatric services.⁸⁸ These services are not available to children with emotional, psychological or severe behavior problems which have already been recognized by a family physician, teacher, parent or social worker.⁸⁹

⁸⁵ Child Welfare Policy Manual, ch. V, p. 44 (1965). The caseworker may authorize hospitalization of the child and may give permission for an operation. Id. at 45. The caseworker must authorize the dental care. Id. at 47A.

⁸⁶ Id. at 47A. Medicaid will pay for major tranquilizers including Thorazine, Stetazine, Mellaril and Prolixin. Memo from Dr. Julie Braus, in Child Welfare Policy Manual, April 15, 1970.

⁸⁷ Human Services, A.P.S. No. 10, 1 (July 1, 1974).

⁸⁸ Memo from Edgar Merrill in Child Welfare Policy Manual, July 13, 1970.

⁸⁹ Id. Such children must be referred to the community mental health centers. Id.

(iv) Education

The Department may also provide the child with educational opportunities which are not available without charge from the local public school.⁹⁰ This includes tutoring expenses,⁹¹ summer school,⁹² and tuition when there is no high school in town.⁹³ The Department will also pay for the education of a committed child after high school if the child has the ability and interest in such education.⁹⁴

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A special fund exists to provide special social, cultural or recreational advantages to individual children. Memo from Robert O. Wylie in Child Welfare Policy Manual, Sept. 16, 1971.

Local school administrative units must pay for most costs incurred in educating wards of the state, including the provision of special education. See text after note 114.

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Human Services, A.P.S. No. 1, 1 (June 19, 1972). Tutoring, which is available to both committed and voluntary children, may be used to meet the special education needs of the child caused by illness, mild mental retardation, disruption due to moving, or failing a course which is necessary for graduation.

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Child Welfare Policy Manual, ch. V, p. 60 (1965).

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Human Services, A.P.S. No. 14, 1 (Sept. 11, 1972).

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Human Services, A.P.S. No. 26, 1 (Dec. 26, 1972). Thus, the Department must determine that the child can benefit from such education. Memo in Child Welfare Policy Manual, Jan. 19, 1972.

(v) Legal Fees

When a child who is in the custody of the Department comes into conflict with the law, the regional office will determine whether the Department will furnish the child with a lawyer.⁹⁵

Similarly, the State may assume financial responsibility for damages which were caused by a child in the custody of the Department.⁹⁶

4. Termination

It is also important to consider the procedures by which children who are receiving services may be terminated from the program. Not only must these procedures allow a child who no longer needs the services to be returned to his home, but they must also guarantee that a child will not be deprived of those services which he continues to need.

a. Evaluation

Perhaps the best method of meeting this objective is through the continued evaluation

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Human Services, A.P.S. No. 25*, 1 (Oct. 31, 1974).

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Human Services, A.P.S. No. 101, 1 (Dec. 18, 1975). If the amount of the damage is no more than \$2000, then the governor and executive counsel must approve. Id. A claim for more than \$2000 requires a special legislative resolve. Id.

of children and their families. Under the regulations, the caseworker must interview the child at least once every four months.⁹⁷ Moreover, the worker must reevaluate the plan for the child at least twice a year and make any necessary modifications.⁹⁸ For children placed in substitute care, this review must be a "deliberate re-assessment of the viability of the original objective".⁹⁹ Similarly, the caseworker must review the progress of any family which is receiving services at least once every four months.¹⁰⁰ Both the caseworker and the client must continually reassess the services which are offered in order to ascertain if any new services or objectives are necessary.¹⁰¹

Moreover, when a child has been removed from his family, the Department must reassess

97 Child Welfare Policy Manual, ch. IX, p. 9 (Rev. Aug. 1967).

98 Id.

99 Human Services, A.P.S. No. 28, 3 (April 1, 1973).

100 Child Welfare Policy Manual, ch. IX, p. 9 (Rev. Aug. 1967).

101 Human Services, A.P.S. No. 39, 4 (July 1, 1973).

this commitment to determine if progress is being made toward allowing the child to return to his family.¹⁰² This reassessment may result in the Department seeking to terminate its services to the child.

b. Termination of Voluntary Custody

Normally the child who has been placed in a voluntary program may be terminated from the program by a decision of either the Department or the parent or guardian,¹⁰³ or when he reaches the age of eighteen.¹⁰⁴ No standard is given for determining when the Department may terminate the care of such a child.

c. Termination of Custody of a Committed Child

The Department's custody of a committed child may be terminated either automatically or through court action.¹⁰⁵ The custody is

¹⁰² If progress is not being made, then the child may be considered for adoption. Human Services, A.P.S. No. 28, 3 (April 1, 1973).

¹⁰³ Human Services, A.P.S. No. 98, 1 (Nov. 11, 1975). A child who has been placed for adoption is terminated when he is adopted. Id. However, if the parent seeks to terminate the program and the Department is concerned about the safety of the child, the Department may seek protective custody of the child through a court order. See text after note 390.

¹⁰⁴ See, 22 M.R.S.A. Section 3793 (Supp. 1975). However, see discussion at text after note 490 for consideration of procedures by which such custody can be continued.

¹⁰⁵ Human Services, A.P.S. No. 98, 2 (Nov. 1975).

terminated automatically when the child reaches age eighteen, dies, or is legally adopted.¹⁰⁶

The court may terminate the custody when it finds that the conditions which required the child's commitment no longer exist and that the child can be adequately cared for outside the custody of the Department.¹⁰⁷ The parents, Department or a third party to whom the child was committed may petition the court for termination.¹⁰⁸ The Department may file such petition if the child has been returned to his parents; the child has been accepted into the Armed Services; or the child is married.¹⁰⁹

d. Extended Care

Normally a child who reaches the age of eighteen is automatically terminated from the Department's custody.¹¹⁰ However, this custody

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But custody can be voluntarily extended after the child reaches age eighteen. See note 111.

107
Id.

108
Id. The Department may file such a petition when it finds that the purposes of the commitment have been accomplished and that such dismissal is in the child's best interest. Id. The Department can request that the child be placed in the custody of a person other than the person who had custody at the time of the commitment. Id.

109
Id. at 3.

110
See supra., notes 105 and 106 and accompanying text.

may be continued for educational, social or physical reasons with the mutual agreement of the child.¹¹¹

In order for this custody to be continued, the child must sign a voluntary contract for services prior to his eighteenth birthday.¹¹²

When such a contract is signed, then the Department will provide care of the child, although the legal custody of the Department has

¹¹¹ Memo, Child Welfare Policy Manual, March 25, 1972. However, this extension will presumably occur only infrequently. See, Memo of Robert O. Wyllie, in Child Welfare Policy Manual, April 10, 1972 which expresses a concern about the potential costs of the program and states that the Department will hold the regional directors liable for "policing" this policy.

When the care is continued for educational reasons, the support continues until the child has achieved or fails to achieve his educational goal or has terminated the educational plan. Memo, Child Welfare Policy Manual, April 10, 1972. Care is extended for physical reasons only when the child is in a previously known and authorized medical treatment plan which could not be completed by the age of eighteen. Id. at 2. Handicapped children will usually be placed either on Aid for the Disabled or general relief. Id. at 1.

¹¹² Id. at 2. This contract specifies the purpose of the agreement and states that it will be terminated if the child fails to fulfill any of the conditions of the purpose. Application and Agreement of Responsibility for the Continued Care of Young Adults, in Child Welfare Policy Manual.

terminated.¹¹³ The child is dismissed from this program when the terms of the contract are fulfilled, when he has failed to fulfill the terms, or when he becomes twenty-one.¹¹³

113

Human Services, A.P.S. No. 98, 2 (Nov. 1975). Thus, the Department is no longer liable for any damages incurred by the child and will not assume responsibility for any contracts which the child enters into. Memo, Child Welfare Policy Manual, 2, April 10, 1972. The Department also will not furnish the child with any legal custody. Id. However, the child will receive medical care. Id.

The child may decide whether to obtain a driver's license and may take the responsibility for owning an automobile. Memo, from Edgar Merrill in Child Welfare Policy Manual, May 15, 1972. However, the Department will seek to include in the contract that the money of the child should be used to further his education. Id.

114

Human Services, A.P.S. No. 98, 1 (Nov. 1974).

APPENDIX XII

Maine's Current Provisions Relating
Drug Abuse, Alcohol Abuse and Prostitution*

*The descriptive review contained in this appendix is excerpted from "Regulations of Maine's Juvenile Justice System" prepared for the Commission to Revise Statutes Relating to Juveniles by its staff in July, 1976.

The Commissioners decided to focus on three private offenses - prostitution, alcohol abuse, and drug abuse. However, significant regulations exist only for the two latter offenses. These regulations focus on either preventing the child from abusing these substances through an education program or providing treatment for the child who is an abuser.¹ Although the education programs related to both alcohol and drug abuse are similar and can be considered together, the alcohol treatment program is much more comprehensive than the drug treatment program and must be considered separately.

A. Education

Most of the programs which seek to educate children on the dangers of alcohol and drug abuse are offered within the school system. Thus, schools are mandated to provide education on alcohol abuse for at least forty-five minutes on Temperance Day.²

The Department of Educational and Cultural Services also provides training programs to assist teachers and community groups in implementing effective alcohol and drug abuse programs in the schools.³

A similar program involves establishing a series of workshops for school and community personnel to provide training in alcohol and drug abuse prevention.⁴ This program will also provide comprehensive information services to schools and com-

¹ See Statutes, 79 (1976). It is interesting to note that the regulations do not provide for a program of sex education.

² Ed. Adm. Letter No. 67, 1 (Feb. 12, 1976). However, no appropriations are currently available for this program. Id.

³ Ed. Budget Plan, Human Development and Guidance Unit - Human Dev./Drug Ed. Section 1 (1976-77).

⁴ Ed. Budget Plan, Human Development and Guidance Unit - Human Dev./Drug Ed. Section (Program 2 1-2 (1976-77)).

munities.⁵ This training and information seeks to integrate alcohol and drug abuse prevention into a general consideration of human behavioral problems in order to focus on the prevention of the causes of the abuse.⁶

Furthermore, the Department of Education has established certain pilot projects relating to prevention. Thus the Student-Teacher-Parent Alcohol Prevention Education Project focuses on training persons to create alternatives to abuse within their school, home or community.⁷ This project will develop a training model which will include opportunities to allow participants to use the skills which they learn.⁸ Another project is the Drug, Alcohol, Tobacco and Human Behavior Pilot Project which seeks to develop a sequential program of primary prevention in the schools.⁹ This project seeks to teach children to recognize the problems and conflicts which may lead to dependence on alcohol and drugs

5 Id. at 2. However, most of these services will not be available until June 30, 1977. Id. at 2-3.

6 Id. at 6.

7 Ed. Adm. Letter No. 63, 1 (Jan. 16, 1976). Four schools will be selected to participate in this program. Id.

8 Id. at 2.

9 Ed. Adm. Letter No. 68, 1 (Feb. 25, 1976). Again, four schools will be selected to participate in this program. Id. at 2.

and to assess the alternatives and resources available to him.¹⁰

B. Alcohol Treatment Programs

An extensive program for the treatment of alcohol abuse exists within the state, through the Office of Alcoholism and Drug Abuse (OADAP).¹¹

The three most important procedures which must be examined in a consideration of this program involve the methods which identify persons in need of the services, establish facilities, and regulate the provision of these services.

1. Identification

Although persons may receive treatment either voluntarily or involuntarily,¹² regulations only cover the involuntary commitment procedures. A person may be involuntarily admitted to treatment on either a short term emergency basis or a long term judicial basis.¹³

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Id.

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See, Statutes, 68-76 (1976) for a consideration of the statutory basis for these programs.

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See, Statutes, 70-71 (1976).

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Id. at 71-76.

Since the regulations are different for these forms of commitment, it is necessary to consider each basis separately.

a. Short Term Emergency Commitment

Basically, short term emergency commitment allows intoxicated and incapacitated persons to be involuntarily committed to an approved public treatment facility for no more than fifteen days.¹⁴ Such commitment provides a method of dealing with persons whose conduct poses an immediate threat to the safety of others or who are unable to make a rational decision regarding their need for treatment.¹⁵

Because such persons need immediate

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Department of Human Services, A Procedural Manual for the Involuntary Commitment of Intoxicated, Incapacitated and Alcoholic Persons in Maine, 1 (hereinafter Manual for Involuntary Commitment). Intoxicated persons are those whose mental or physical functioning is substantially impaired as a result of the use of alcohol. Id.

Incapacitated persons are those who are unconscious or otherwise incapable of realizing and making a rational decision as a result of the use of alcohol. Id.

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Id.

restraint and treatment they can be admitted to the facility upon receipt of an application and a certificate from a physician.¹⁶ Thus, the spouse, guardian, or relative of the person whose commitment is sought or any responsible person may present an application to the administrator of an approved facility.¹⁷ This application must state that the person is either an intoxicated person who poses an immediate threat to others or an incapacitated person.¹⁸

Every application must contain a certificate by a licensed physician who has examined the person no more than two days before the application is presented.¹⁹

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Id.

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Id.

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Id. The application must also contain the facts which support the alleged grounds for commitment. Id. at 2.

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Id. If a person refuses to submit to a medical examination, he may not be committed under this section. However, the court may order that he be temporarily committed for no more than five days for a diagnostic examination during a judicial commitment. Id.

Only a licensed physician who is not employed by the facility may make the evaluation. Id. Similarly, a physician who makes the initial application may not also examine the person. Id.

These certificates must state the results of the examination and determine if the results support the allegations of the application.²⁰

After the administrator of the facility has received both the application and the certificate, he must decide whether to admit the person.²¹ No person may be involuntarily committed to a treatment facility for more than five days.²² However, if the administrator files a petition for judicial commitment and determines that the grounds for emergency commitment still exist, the person may be detained for an additional ten day period.²³

b. Long Term Judicial Commitment

The procedure for long term judicial commitment allows the court to order an

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Id.

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Id. Although this decision is usually made with the advise of a physician, the regulations do not specify any standards for making this decision. However, the allegations in the application must be established.

Id. at 1.

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Id. at 3.

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Id.

alcoholic to undergo treatment for an initial period of thirty days.²⁴

This procedure is begun when a spouse, guardian or relative of the alcoholic or the administrator of an approved facility files a petition for commitment with the District Court.²⁵ This petition must allege that the person either is an alcoholic who poses a threat to the safety of others or that he is an alcoholic who is unconscious or incapable of making a rational decision concerning his need for treatment.²⁶

Once the petition has been filed, the court will set a date for the hearing

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Id. at 4. An alcoholic is a person who habitually lacks self-control over the use of alcoholic beverages or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic functioning is substantially disrupted. Id. The court may also order recommitment for no more than 180 additional days. Id. See Statutes, 73-76 (1976).

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Id. The Court must be located in the judicial district in which the alleged alcoholic resides or is present. Id.

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Id at 4-5. If possible, the petition must also contain facts which support this allegation. Id at 5.

within ten days and will notify all interested persons.²⁷

The petition must also be accompanied by a certificate from a licensed physician unless the person refuses to be examined.²⁸ If the person refuses to undergo this examination, then the Court may commit him for no more than five days for diagnosis.²⁹

Once the petition and certificate have been filed, the court will hold a hearing to determine if the grounds for commitment have been established by clear and convincing evidence.³⁰ At the hearing, the person will receive certain procedural rights including the right to counsel and the right to be examined by a licensed physician.³¹ If the court finds

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Id. at 4. Persons to be notified include the petitioner, the alcoholic, the next of kin of the alcoholic and the alcoholic's parent or legal guardian. Id.

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Id. at 5. See discussion at notes 177-178 for the requirements of this certificate.

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Id. at 5.

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Id. at 4-5. The grounds are the same as those required for filing a petition. Id. at 4. See text at note 184.

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Id. at 5-6. The person may also be present unless the court believes that his presence would be injurious to him. Id. at 5.

The person may be examined by a physician of his choice or the court will if requested appoint a physician to examine him. Id. at 6.

that grounds for involuntary commitment have been established and that the treatment facility will provide adequate, appropriate and beneficial treatment, it will order that the person be committed.³²

2. Facility

Once persons in need of care have been identified, provisions must be made for the facilities which will provide such care. The Office of Alcoholism and Drug Abuse (OADAP), also has the responsibility of supervising facilities for the prevention and treatment of alcoholism.³³ Programs offered at these facilities seek to identify, evaluate and treat persons who abuse alcohol while maintaining the dignity and protecting the human rights of the patients.³⁴

³² Id. at 6. However, a person may be committed either to a treatment facility or to a public or private hospital. Id.

³³ 22 M.R.S.A. Section 5-A (Supp. 1975). See discussion on alcohol abuse at Statutes, 61-76 (1976). These programs deal specifically with Goal 14 of the Suggested Goals stated at Statutes, Appendix III (1976).

³⁴ OADAP, Regulations for the Licensing of Residential Alcohol Treatment Facilities in the State of Maine, iv (1975) (hereinafter OADAP, Alcohol Treatment Facilities Regulations).

Before an alcohol facility may operate within the state, the owner must obtain a license from OADAP.³⁵ This license will be granted only after the OADAP determines that the facility is in substantial compliance with all the requirements set forth in the regulations.³⁶ Such a license, which may be granted for a period of no more than one year, is not transferable to either a new owner of a new facility.³⁷ These licenses may also be

³⁵ Id. at Section 7(1)(1975). An alcohol facility is any establishment, organization, or institution, public or private, which offers facilities for the diagnosis, care, treatment or rehabilitation of individuals who suffer physically, emotionally, or psychologically from the abuse of alcohol and which includes as part of its treatment a requirement that the persons physically reside on the premises.

³⁶ Id. at Section 9(1)(1975). Thus the facility must meet certain safety, health and plumbing regulations. Id. at Section 2(4)(1975). The program must also seek to insure understanding and cooperation with the local community. Id. at Section 2(7)(1975). The facility must also maintain the confidentiality of the records of patients receiving treatment. Id. at Section 2(12)(1975).

³⁷ The OADAP may grant any one of the following: a temporary license for no more than ninety days in order to allow the facility to make specified corrections; a conditional license which includes the conditions which must be met; or a full license for one year. Id. at Section 9(2)(1975). Similarly, the license is not transferable to a new program. Id. at Section 10(1)(1975). The OADAP must also be informed of any changes in the program of the facility. Id. at Section 10(2)(1975). If it feels these changes are substantial, it may require an application for a new license. Id.

suspended, denied or revoked if the facility has acted in a manner deemed detrimental to the client or has violated any laws or regulations.³⁸

All treatment facilities must meet certain general requirements and must also meet the requirements specifically established for at least one of the specific aspects of treatment.³⁹

a. General Requirements

Although many of the general requirements relate to the procedures for actually providing care to the patients,⁴⁰ other regulations deal more specifically with ensuring that the facility has adequate resources.⁴¹

Thus, regulations seek to guarantee

³⁸ Id. at Section 11(1)(1975). Activities detrimental to the client are those which result in physical, mental, moral or emotional damage to the client. Id.

³⁹ Id. at Sections 2(1) and 2 (1975). These treatment aspects are emergency, inpatient, intermediate, and outpatient care, outreach and shelter. Id. at Section 2(2)(1975) These aspects are discussed more thoroughly at the text after note 197.

⁴⁰ These regulations will be discussed at text after note 207.

⁴¹ Many of the regulations which deal with such matters as building codes or financial arrangements are beyond the scope of this paper.

that there will be an adequate number of sufficiently trained and experienced staff to insure the health and safety of the clients.⁴² The program must provide methods for supervising all personnel and for annually evaluating their performance.⁴³ Moreover, the facility must have a written plan providing for ongoing training of the staff.⁴⁴

Whenever the facility obtains medicine from a community pharmacy or from a pharmaceutical service within the facility,⁴⁵

⁴² Id. at Section 26(2)(1975). All clinical staff must be mentally, physically and occupationally capable of performing the assigned tasks. Id.

⁴³ Id. at Section 26(1)(1975). Personal problems related to the use of alcohol shall neither be a factor against employing an individual and nor shall it be an exclusive factor assuring employment. Id. However, all clinical staff must be free of a drinking problem for at least one year. Id. at Section 26(2)(B)(3)(1975).

⁴⁴ Id. at Section 26(5)(1975). The training must include instruction in the theory of care, interviewing techniques, the detection of abnormal behavior, the development of a documented recovery plan, and knowledge of both community referral and community transportation resources. Id.

⁴⁵ Id. at Section 30(2)(1975). When the pharmaceutical service is within the alcoholism facility, the director of the service must be a registered pharmacist. Id. at Section 30(1)(1975).

care must be taken regarding the prescription, administration, storage and dispensation of the medications.⁴⁶ Furthermore drugs must be stored in locked containers using proper methods to insure the stability of the drug.⁴⁷ Reactions to drugs and medication errors must be immediately reported to the physician responsible for the client.⁴⁸

Each program must evaluate itself at least once a year to measure whether it is meeting the goals and objectives of the program.⁴⁹

b. Specific Requirements

The program may include any one of several types of care. Since each of these types of care must meet separate requirements, it is necessary to examine

⁴⁶ Id. at Section 30(2) (1975).

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at Section 32(1) (1975). Reports of this review must be made available to the OADAP and the governing authority which participates in the preparation of the budget. Id.

them individually.

- Emergency care is primarily a service which provides detoxification services to persons.⁵⁰ Certainly the most important requirement is that the services must be available twenty-four hours each day.⁵¹ Clients of these services must receive immediate medical care and proper supervision, and a systematic evaluation of their problems leading to the development of a plan for continued care.⁵²
- Inpatient care involves supervised hospital care twenty-four hours a day for the diagnosis or treatment

50 Id. at Section 40 (1975).

51 Id. at Sections 40-43 (1975). Not only must a registered nurse or a licensed practical nurse and an alcoholism counselor be on duty throughout the day, but also a transportation system must be available to allow emergency hospital care. Id. at Sections 41-43 (1975).

52 Id. at Section 40(1) (1975). Other services required include detoxification, chemo-therapy, counseling, special diets, referral and provisions for a therapeutic environment, offering an alcohol-free controlled group living experience. Id.

of medical or psychiatric illnesses associated with alcohol abuse.⁵³

An individualized treatment plan for the client must be made on the basis of his medical needs and must be updated after a social/psychological evaluation to specify the services planned to meet his needs.⁵⁴

- Intermediate care seeks to facilitate the recovery of the abuser by placing him in an organized therapeutic environment in which he can receive services and benefit from the residential setting.⁵⁵ This facility must have a documented medical affiliation with a hospital, physician or other resource which can meet

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Id. at Section 45(1)(1975). Alcoholism is considered a secondary diagnosis of clients receiving this care. Id. When a client is admitted for such care, his medical needs must be evaluated within twenty-four hours. Id. at Section 45(2)(1975).

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Id. at Sections 46-48(1975).

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Id. at Section 50(1)(1975). Services which must be provided include physical examinations, individual and group therapy, counseling, chemo-therapy, recreational and vocational guidance and retraining. Id. at Section 50(2)(1975).

its medical needs.⁵⁶ Because of the nature of the facility, its physical premises must resemble a home and provide adequate privacy to the residents.⁵⁷ A peer group of fellow residents will allow the client to receive support and assist him in developing interpersonal relationships and social skills.⁵⁸

- Out-patient care allows the client to receive a variety of diagnostic services when his physical and emotional status permits him to remain in the community and to function in

⁵⁶ Id. at Section 51(1)(1975). Transportation to these facilities must be continuously available. Id. at Section 53 (1975).

⁵⁷ Id. at Section 52(1)(1975).

⁵⁸ Id. at Section 54 (1975). Thus a program involving non-drinking social interaction must be established. Id.

The program also seeks to involve residents in community programs and to allow them to receive community services. Id.

- his usual environment.⁵⁹ Each client must receive services on a scheduled basis according to an individualized treatment plan based on a social/psychological evaluation of the client.⁶⁰
- Outreach seeks to identify those persons who have problems related to the use of alcohol to enable them to obtain services.⁶¹
 - Aftercare provides services to clients who have progressed sufficiently through another form of care but who need continued contact to sup-

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Id. at Section 60(1)(1975). Thus, a facility offering outpatient services should include a room in which the client can meet with outside community service providers. Id. at Section 63 (1975).

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Id. at Sections 60-62 (1975). The social/psychological evaluation must include a description of the drinking history and previous treatment of the client, a determination of his current emotional state, and a description of his vocational history, family relationships, educational background and socio-economic status. Id. at Section 60 (1975). When necessary a medical evaluation may also be conducted. Id. at Section 61 (1975).

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Id. at Section 67(1)(1975).

port and further this progress.⁶²

Such services, which should be provided for at least one year, may be obtained by referring the client to another program, contracting with another agency, or directly following-up the client.⁶³ This care must include an individualized service plan developed with the client.⁶⁴

- Shelter care is a pre-treatment program which provides the client with the necessities of life and which may motivate him into a treatment program.⁶⁵ The staff of the

⁶² Id. at Section 75(1) (1975).

⁶³ Id. at Sections 75 and 76 (1975). When direct follow-up is used the care must be provided by contact at least every ninety days personally, by telephone, by visits to the facility or other meaningful methods. Id. at Section 76(4) (1975).

⁶⁴ Id. at Section 77 (1975). The plan must include provisions both for the referral of clients and for re-entry into the treatment system when necessary. Id.

⁶⁵ Id. at Section 80(1) (1975). Services which must be provided include well-balanced meals, clean clothing and bedding, shower facilities and toilet articles. Id. at Section 80(3) (1975).

program, who must be provided twenty-four hours each day, must be able both to deal with emergency situations and to refer clients to treatment facilities.⁶⁶

3. Provision of Services

Basically, the requirements for the provision of services either seek to guarantee that the person will receive treatment or that he will retain certain rights. Although these interests are related, they are independent and will be considered separately.

a. Treatment

Every person committed to the care of a facility has the right to an individualized treatment plan, maintained on a current basis.⁶⁷ The plan must specify the needs of the individual and provide a method of evaluating his progress.⁶⁸

⁶⁶ Id. at Section 81(1)(1975). Preferable the staff should be recovering alcoholics who are able to maintain their sobriety. Id. at Section 81(2)(1975).

⁶⁷ Id. at Section 21(1)(1975). Also see Manual for Involuntary Commitment, 3, 6.

⁶⁸ OADAP, Alcohol Treatment Facilities Regulations, Section 21(1)(1975).

Moreover a case record of each client must be maintained which includes an analysis of the client's problems and goals, evaluation of his progress reports and records of significant incidents.⁶⁹

b. Rights

The program must also seek to preserve the dignity of the client and must enhance the individuality of the client. Thus, the client must be provided with certain essentials.

The physical environment must allow each person the right to personal property and privacy.⁷⁰ Moreover, each client must have responsibility for maintaining his own living quarters.⁷¹ Furthermore the facility must provide the client with adequate health and safety standards includ-

⁶⁹ Id. at Section 22(1)(1975). Where appropriate, the record must also include the diagnosis of the client, an evaluation of the client's family, and pertinent correspondence. Id. Such records are confidential and must be kept in a locked file system. Id. at Section 22(2)(1975).

⁷⁰ Id. at Section 24(2)(1975).

⁷¹ Id.

ing emergency fire drills.⁷²

Clients in residential or extended day care programs must also receive a nutritious diet served in an appetizing manner which meets any special dietary needs of the clients.⁷³

Clients must also be guaranteed other civil rights. Thus, they must be allowed adequate opportunities to consult with counsel and maintain contact with their family and friends.⁷⁴ The civil rights of the client may not be restricted unless the medical welfare of the client requires it.⁷⁵ Furthermore, the client may not be subjected to mechanical restraints or seclusion without a written order by the

⁷² Id. at Sections 24(2) and (4) (1975).

⁷³ Id. at Section 28.

⁷⁴ Id. at Section 25(1) (1975). Thus, their mail may not be intercepted, read or censored. Id. at Section 25(2) (1975). Moreover, reasonable rules regarding the use of the telephone must be adopted. Id. Similarly reasonable rules regarding visitation must be adopted. Id. at Section 25(1) (1975).

⁷⁵ Id. at Section 25(3) (1975).

administrator.⁷⁶

Any research using human subjects must also preserve the rights of the clients. Whenever any of the research presents a risk to the client, his informed consent must be obtained.⁷⁷ Moreover, the anonymity of the client must be protected if the research findings are made public.⁷⁸

Finally, the rights of the clients are protected by the requirement that each facility have admission and discharge procedures.⁷⁹ Thus, each facility must have written admission policies which detail the procedures to be followed and include

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Id. at Section 25(4)(1975). When such restraints or seclusions are used, the staff must observe the client every fifteen minutes. Id.

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Id. at Section 25(5)(1975). Before this consent may be obtained, the client must receive a complete explanation of both the conventional and experimental procedures with a description of the potential benefits, discomforts and risks and a disclosure of alternative procedures. Id. Moreover, the client must be informed that he is free to withdraw his consent and cease participating in the research at any time. Id.

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Id.

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Id. at Section 27 (1975).

a statement of fee schedules.⁸⁰

Moreover, each facility must discharge patients according to the procedures established in the regulations. Thus persons who were admitted on an emergency basis must be discharged within five days unless a petition for judicial commitment is filed.⁸¹

Similarly persons who were judicially committed must be automatically discharged after thirty days unless a recommitment order is obtained before the thirty day period expires.⁸² Only the OADAP may

⁸⁰ Id. at Section 27(1)(1975). A person may not be denied treatment merely because he has previously withdrawn from treatment against medical advice or has relapsed after earlier treatment.

⁸¹ Manual for Involuntary Commitment, 3. The procedure for judicial commitment is discussed at text after note 181.

⁸² Manual for Involuntary Commitment, 7. This requirement guarantees that the condition of the alcoholic will be reviewed by the court. Id.

A competent patient or his parent or guardian may also request that the patient be transferred to another facility, including a private treatment facility. Id. at 6.

file for recommitment.⁸³ The procedures at the hearing are similar to those required for the original commitment.⁸⁴

A person must also be discharged prior to the expiration of his commitment order if the conditions for which he was admitted no longer exist.⁸⁵ He may also be

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Id. The decision to file will be based on the recommendations of the administrator of the facility. Id. Although normally such decision is discretionary, the OADAP must file if the person was determined to be an alcoholic who was likely to inflict harm and who is still likely to inflict harm. Id.

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Id. Although the recommitment hearing will be held without a medical certificate, such certificate should be provided. Id.

If the court finds that the grounds exist for recommitment, then the person may be recommitted for no more than 90 days. Id. A person may only be recommitted twice before he is discharged. Id.

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Id. at 8. Thus, the person must be discharged when one of the following two conditions are met:

1) If the person was committed because he was an alcoholic who was likely to inflict physical harm on another, he must be discharged if:

- a) he is no longer a practicing alcoholic, or
- b) he is no longer likely to inflict physical harm.

2) If the person was committed because he was an alcoholic who was incapacitated and lacked self-control, he must be discharged if:

- a) he is no longer incapacitated and further treatment will not be likely to significantly improve the person's condition, or
- b) treatment is no longer adequate and appropriate. Id.

be discharged if the OADAP and the administrator find that conditions are present to warrant such action.⁸⁶

C. Drug Treatment Facilities

The Department of Human Services also regulates the licensing and certification of drug treatment facilities.⁸⁷ These regulations govern all facilities which provide diagnosis, care, treatment or rehabilitation to persons suffering from the physical or mental effects of drug use.⁸⁸

Basically, these regulations specify the procedures for receiving a license and the standards which each facility must meet in providing services. Thus, in order to apply for a license, the applicant

⁸⁶ Id.

⁸⁷ All such facilities must be licensed. See 22 M.R.S.A. Section 5-A (Supp. 1975), discussed at Statutes, 132 (1976). Also see the discussion on drug abuse at Statutes, 76-80 (1976). These facilities pertain

⁸⁸ Regulations for Licensing and Certification of Drug Treatment Facilities, Section 2 (hereinafter Drug Treatment Regulations).

These regulations are much less specific than the regulations for alcohol treatment facilities and do not include provisions for the identification of drug abusers, procedures for placing users in the facility or methods for being discharged from the facility.

must specify not only the name, location and directors of the facility, but also describe the program and the procedures which will be used to evaluate the effectiveness of the program.⁸⁹ After receiving the application, OADAP will inspect the facility and may even hold public hearings on the matter.⁹⁰

Such programs must meet certain requirements. Thus an application for a license may be denied if the program will not rehabilitate drug abusers, will be in violation of any local or state law, or will be detrimental to public health and safety.⁹¹

Moreover a program must both have certain demonstrable goals and certain services.⁹² These include giving the client sufficient information about his rights and responsibilities to enable him to make

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Id. at Section 3-1. The license is good for a term of one year, Id. at Section 3-5, and may not be transferred to either another applicant or another premises. Id.

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Id. at Section 3-2. The Office is located within the Department of Human Services. Id. at Section 2. The inspection shall verify the information contained in the application and will assure that the facility will comply with all laws, rules and regulations relating to the facility. Id. at Section 3-3.

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Id. at Section 3-7.

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Id. at Sections 5-1 and 5-4. These goals must include improving the internal adjustment, adjustment to others and vocational, educational and social performance of the client. Id. These services include medical, dental, psychiatric, laboratory, legal and social services. Id.

a decision regarding admission.⁹³

No more than sixty clients may participate in the program.⁹⁴ This program must include not only opportunities for individual and group interaction but also provisions for scheduled recreational and educational activities.⁹⁵ Moreover, individual and group counselling for spouses, parents and other persons maintaining a significant relationship to the client must be available when appropriate.⁹⁶

The program must provide for an ongoing review of the progress of the client.⁹⁷ When the client has received optimum benefit from the treatment,⁹⁸ planning for his discharge must be undertaken in

⁹³ Id. at Sections 5-31 and 5-32.

⁹⁴ Id. at Section 5-41.

⁹⁵ Id. at Sections 5-42, 5-44 and 5-45. The educational activities must include both informational and experiential activities. Id. at Section 5-45.

⁹⁶ Id. at Section 5-52.

⁹⁷ Id. at Section 5-61.

⁹⁸ Id. at Sections 5-62 and 5-63. Successful completion occurs when the client has resumed responsibility for himself and is no longer dependent on drug related activities for his recreation. Id. Moreover, the client must be as economically self-sufficient as possible and must have demonstrated either job stability or responsibility in seeking employment. Id.

consultation with him.⁹⁹ Thus, the facility must assist the client find a job, make living arrangements and resume his education.¹⁰⁰

⁹⁹

Id. at Section 5-61.

¹⁰⁰

Id. at Section 5-71.